Per JESSEL, M. R., According to the usual practice of the Court the plaintiff's application ought to have been granted. The plaintiff was out of time, and in that case if a motion is made for judgment on admissions in the pleadings, or if the analogous step is taken of a motion to dismiss for want of prosecution, the usual course is to give the plaintiff time to take the next step upon his paying costs, which is a sufficient punishment and will prevent the rules from becoming a dead letter. This course will not be departed from unless there is some special circumstance such as excessive delay. In the present case there was no extraordinary delay, the original time for delivering reply not having expired till July 25th.

[NOTE.—*The Imperial and Ontario rules are identical.*]

IN RE MILAN TRAMWAYS COMPANY.

Imp. O. 19, r. 3 — Ont. rule 128 — Set off — Counter-claim.

L. R. 22 Ch. D. 121.

Per KAY, J., "In my opinion this rule was not intended to give rights against third persons which did not exist before, but it is a rule of procedure designed to prevent the necessity of bringing a cross-action in all cases where the counter-claim may conveniently be tried in the original action."

[NOTE.—*The Imperial and Ontario rules are identical.*]

CORRESPONDENCE.

Signing Judgments in Div. Courts under O. J. A.

To the Editor of the LAW JOURNAL.

SIR,—In the number of your valuable journal of the 15th instant, you published a report of Judge Clarke in the case of *Burk* v. *Brittain*, where he holds that he may, by virtue of section 244 of the Division Court's Act and rule 80 O. J. A., grant an order empowering the plaintiff to sign judgment without a formal trial of the action in cases commenced in the Division Court by special summons. In an editorial notice of the judgment, you refer to the case of *Willing* v. *Elliott*, which you will find fully reported in 37 U. C. Q. B. 320. I acted for the plaintiff in this case of *Burk* v. *Brittain*, and on the strength of my success applied to the Judge of the County Court at Lindsay, for a summons calling on the defendant to show cause why the plaintiff should not have leave to sign final judgment in a case of *Conan* v. *McQuade* on the same material as in the former case, by a certified copy of all the proceedings in the cause, and an affidavit as provided by Rule 80, O. J. A. made by the plaintiff; but the Judge refused the summons. In this latter case the action was on a note made by the defendant, and commenced by special summons. The learned Judge, in refusing the summons, did not deliver a written judgment, but said that while he considered that under the authority of *Fletcher* v. *Noble*, *ante* vol. 18, p. 371, he had the power by virtue of sec. 244 of the Division Court Act, to grant this summons, still it was a matter of discretion, and he did not think it a proper case to call forth the exercise of that discretion. He thought that in many cases it might work injustice to a defendant who could successfully oppose such an application, as he would be put to costs in employing a solicitor to prepare affidavits, &c., which could not be given back to him in any way that he was aware of. Witness fees and expenses might be allowed him in case he defended in person and came to the county town to oppose; but the usual way of defending such a motion, namely, by affidavits and counsel, would be entirely lost. For the purpose then of laying down a principle to apply to all cases which might result in many ways, he deemed it not expedient to grant the summons.

Yours truly,

D. BURKE SIMPSON.

Bowmanville, Feb. 19th, 1883.

Where it is expressed in terms upon a railway ticket that it is not good unless "used" on or before a certain day, a presentation of the ticket and its acceptance by the conductor before midnight of that day, although the journey is not completed until the next morning, will be held to be a compliance with the condition.

Where a railway ticket binds a passenger to a continuous journey, he is not bound to commence his journey at the starting point named in the ticket, but may enter the train at any intermediate station on the route.—*Auerbach* v. *New York Central, R. Co.*, (*Am. Law Reg.*, Dec. 1882.)