against Dandelin, but condemned the other defendant, Lamoureux, by default. The case was then taken before the Court of Review by Lamoureux, and the Court of Review, holding that the plea of payment had been established, reversed the judgment against Lamoureux and dismissed the action as to him also. The plaintiffs in the suit now brought the case before the Court of Appeals, submitting that a defendant who had made default in the Court below could not avail himself in the Court of Review of a plea which had been made by another defendant and dismissed.

DRUMMOND, J., was of opinion that the plea of payment having been proved by one of the defendants, the other could not be condemned to pay the debt over again.

MEREDITH, J., The fact of the note having been paid should have caused the action to be dismissed as to both defendants. The judgment of the Court of Review must therefore be confirmed. Judgment confirmed unanimously.

Sicotte & Rainville for appellants; Lafrenaye & Bruneau for respondent.

GRAND TRUNK COMPANY (defendants in the Court below), appellants; and CUNNINGHAM (plaintiff in the Court below,) respondent.

HELD—*That a person purchasing from a Railway Company a ticket which is declared to be good for a specified term, enters into a special contract which is at an end as soon as such term has expired; and the holder of a return ticket attempting to return after the expiration of the term for which the ticket was issued may be lawfully ejected from the train, on refusal to pay full fare.*

This was an appeal from a judgment rendered, 31st Dec., 1864, by Mr. Justice Berthelot, rejecting a motion for a new trial. The plaintiff instituted proceedings 6th April, 1863, for $300 damages alleged to have been sustained in consequence of his illegal expulsion from the cars of the Company on the 8th Nov., 1861, while returning from Montreal to Acton Vale where he resided. The circumstances were as follows: On the 6th Nov., 1861, the plaintiff purchased a return ticket from Acton Vale to Montreal and back, for which he paid $2.50, the ordinary fare each way being $1.75. On the ticket was printed, "Good for day of date and following day only." The plaintiff proceeded to Montreal on the 6th Nov., but did not embark on the train to return till the 8th. When the conductor came round, the plaintiff presented his return ticket. The conductor informed him that it was out of date, and read to him his instructions forbidding him to accept return tickets that were out of date. He demanded the full fare for returning, $1.75. The plaintiff refusing to pay, was put off the cars at Charron's Station. The plaintiff having brought an action of damages, the case was tried before a jury. Mr. Justice Smith, who presided, charged the jury that the Company could not make a distinction between passengers, it being proved that on other occasions conductors had accepted return tickets that were out of date. The jury found a verdict for $100 damages. The defendants then moved for a new trial on the ground that the verdict was contrary to the evidence, it being established that there was a special contract that the ticket was good for two days only; and also on the ground of misdirection by the presiding judge. This motion being rejected, the present appeal was instituted.

DRUMMOND, J., after stating the facts of the case, said: The judges of the Court of Appeals are unanimous in taking a different view of the case from the judges of the Court below. We consider that there was a special contract entered into voluntarily between the respondent and the Grand Trunk Company. The former was bound to avail himself of the ticket within the time specified. It is true that no notice was posted up that the rule as to return tickets would be strictly adhered to, but I do not think that it was necessary for the Company to post up a notice of a rule printed on the ticket. I can account for the verdict only by the strange prejudice which some people have against companies—companies without the existence of which we should have to return to a state of barbarism. If a conductor did allow persons on certain occasions to pass on a spent ticket, is the fact of a conductor neglecting his duty any reason why other people should expect to pass on expired tickets?

MONDELET, J., remarked that if the plaintiff's pretensions were maintained, the result would be the constant evasion of a rule which the Company had a right to enforce.

MEREDITH, J., The evidence in this case instead of establishing a *usage* simply establishes the existence of an *abuse*.

AYLWIN, J., pronounced the judgment of the Court—seeing that the verdict was contrary to evidence, and that the presiding judge should have charged the jury to find a special contract, and that the ticket was spent and useless, verdict set aside and a new trial ordered.

Judgment reversed unanimously.

Cartier & Pominville for appellants; Perkins & Stephens for respondent.

INDUSTRY VILLAGE BUILDING SOCIETY (plaintiffs in the Court below), appellants; and LACOMBE, *père*, (defendant in the Court below), and SCALLON (opposant in the Court below), respondent.

Question of evidence as to certain payments.

This was an appeal from a judgment rendered at Joliette by Mr. Justice Bruneau, 18th March, 1861, maintaining the opposition of Scallon, opposant, which had been contested by the plaintiffs, on the ground that Scallon had previously been paid the amount claimed by his opposition.

MONDELET, J., said there was no difficulty in the case. The opposant's claim had not been extinguished at the time the opposition was fyled.

Judgment confirmed unanimously.

Pominville & Godin for appellants; Leblanc & Cassidy for respondent.