

kept alive by N. after the judgment as to title; that V. was entitled to her decree for performance; and that the whole purchase money must be paid to the trust company.

*Marsh, Q.C., and Roaf* for the appellants.

*McPherson and Clarke* for the respondents.

Ontario.]

[Feb. 20.]

GRAND TRUNK R.W. CO. v. BEAVER.

*Railway company—Purchase of ticket by passenger—Refusal to deliver to conductor—Ejection from train—Contract between passenger and company—Railway Act, 51 Vict., c. 29, s. 248 (D.).*

By s. 248 of the Railway Act, 51 Vict., c. 29 (D.), any person travelling on a railway who refuses to pay his fare to a conductor on demand may be put off the train. B. purchased a ticket to travel on the Grand Trunk Railway from Caledonia to Detroit, but had mislaid it when the conductor took up the fares, and was put off the train for refusal to pay the fare in money or produce the ticket.

*Held*, reversing the decision of the Court of Appeal (20 A.R. 476), which affirmed the judgment of the Divisional Court (22 O.R. 667), that the contract between a purchaser of a railway ticket and the company implies that the ticket will be delivered up when demanded by the conductor, and that B. could not maintain an action for being ejected on refusal to so deliver.

Appeal allowed with costs.

*McCarthy, Q.C., and Nesbitt* for the appellants.

*DuVernet* for the respondent.

Ontario.]

[Feb. 20.]

CLARKE v. HAGER.

*Contract—Illegal or immoral consideration—Transfer of property—Intention of transferor—Knowledge of intended use—Pleading.*

H. sold a house to a person who had occupied it as a house of ill-fame, taking a mortgage for part of the purchase money. The equity of redemption was assigned to C., and to an action of foreclosure C. set up the defence that the price paid for the house was in excess of its value, and a part of it was for the good will of the premises as a brothel. On the trial it was found as a fact that H., when selling, knew the character of the buyer and the kind of place she had been keeping, but that the house was not sold for the purpose of being used as a place of prostitution. Judgment was given against C. in all the courts below.

*Held*, affirming the decision of the Court of Appeal, TASCHEREAU, J., dissenting, that the particular facts relied on as constituting the illegal or immoral consideration should have been set out in the statement of defence; that if the house had been sold by H. with the intention that it should be used for an immoral or illegal purpose, the contract of sale would have been void and incapable of being enforced, but mere knowledge by C. of the buyer's intentions so to use it would not avoid the contract.

Appeal dismissed with costs.

*R. Clarke*, appellant, in person.

*Armour, Q.C.*, for the respondent.