price. An account was kept in the books of the bank called the "C. R. M. Trust account," in which these stock transactions were recorded. The cashier used this account to assist him in some private speculations, and having become a defaulter in a large amount he absconded.

Held, affirming the judgment of the Court below (13 Ont. App. Rep. 390), that even if this dealing in stocks by the bank was illegal it would not relieve the sureties of the cashier from liability on their bonds.

Robinson, Q.C., and *Malone*, for the appellants.

Bain, Q.C., for the respondents.

New Brunswick.]

GREENE v. HARRIS.

Practice—Set off—Not pleaded in action—Right to set off judgment—Equitable assignment.

G. and H. brought counter actions for breaches of agreement. In March, 1884, G. obtained a verdict with leave to move for increased damages, which was granted, and in June, 1885, he signed judgment. In April, 1884, G. assigned to H. all his interest in the suit against H., and gave notice of such assignment in May, 1884.

In February, 1885, H. signed judgment against G. on confession.

Held, reversing the judgment of the Court below (25 N. B. Rep. 451), Strong, J., dissenting, that H. could not set off his judgment against the judgment recovered against him by G. and assigned to H.

Weldon, Q.C., for the appellant.

CIRCUIT COURT.

SHERBROOKE, October 31, 1887.

Coram BROOKS, J.

PIJON v. LA COMPAGNIE TYPOGRAPHIQUE DES CANTONS DE L'EST.

Affidavit to be made by publisher of newspaper— C.S.L.C., ch. 11.

HELD:—*That that portion of chapter 11 C. S. L. C., which relates to the affidavits to be made by persons publishing newspapers, and to the penalties to be incurred in default of making such affidavits, is repealed by 40 Vic. (Que.) ch. 15 and amending Acts, as being inconsistent therewith.*

Plaintiff sued defendants for a penalty of $20, alleged to have been incurred under chapter 11 C. S. L. C. This statute provides that every person publishing a newspaper shall make an affidavit as therein prescribed, setting forth the names and additions of the printer or publisher of the paper, and of the owners, or of two of them, if there be more than two in all; and that in default of such affidavit he shall incur a penalty of $20.

Defendants pleaded that they are an incorporated company; that by 40 Vict. ch. 15, and acts amending the same, all incorporated companies (except banks and insurance companies) are ordered, under a penalty of $400, to make a declaration stating the name of the company, when and how incorporated, and the situation of its chief place of business within the Province; and that this act was a virtual repeal of the act under which plaintiffs sued.

The following is the substance of the learned judge's remarks :—

The statute sued on by plaintiff had never been expressly and in terms repealed. But Dwarris says, a statute may be repealed by a subsequent statute in which it is not referred to, if it be inconsistent with the subsequent statute. Was there such inconsistency in this case? The Court thought there was. Defendants are an incorporated company. The later acts apply to all incorporated companies whatsoever, saving special exceptions which did not affect defendants. It prescribed the declaration, on the giving of which such companies may lawfully carry on business. The declaration was intended to attain the same object as the affidavit, viz., to furnish third parties with the proper means of suing such companies, and may, therefore, under the circumstances, well be held to have taken the place of the affidavit. It was not alleged that defendants had not made such declaration. The action could not be maintained.

Action dismissed.

J. H. N. Richard, for plaintiff.

Ives, Brown & French, for defendants.

(D. C. R.)