

SUPREME COURT OF NEW BRUNSWICK.

HILARY TERM 1872.

European and N. American Railway Co. vs. Thomas.—The plaintiffs were incorporated by Provincial Act, 27 Vict., c. 43, for the purpose of constructing a railway from St. John to the boundary of the United States, the capital stock to be two millions of dollars, and the Company to proceed to locate and complete the road as soon as \$50,000 of the stock were paid in. The Directors were authorised to make equal assessments on the shares from time to time, as they might deem necessary, to be paid to the Treasurer, who was to give notice thereof; and in case any subscriber for stock neglected to pay the assessment on his share for 30 days after notice, the Directors might order his share to be sold at auction, and in case of any deficiency he should be accountable to the Company for the balance. By an Act, 32 Vict., c. 54, to amend the Act of Incorporation, after reciting that it was doubtful whether the subscribers for shares were legally liable to pay assessments, unless the whole amount of the capital stock had been subscribed for, and the \$50,000 paid in, and also whether the notices of assessment had been given in accordance with the Act of Incorporation,—enacted, 1. That the subscribers for stock should be liable in the same manner and to the same extent as if the whole capital stock had been fully subscribed, and as if the \$50,000 had been paid in, in the manner directed by the Act of incorporation, and as if all assessments on the shares and the notices given thereof, had been made and given according to the same Act. 2. That to entitle the Company to recover against any stockholder, two months' notice of the assessment should be published in a newspaper, and after the expiration of that time the Company should be entitled "to sue for recovery, and receive from any stockholder the amount due for unpaid subscribers' stock, in the same manner as if the calls for assessment had been regularly made" in accordance with the requirements of the Act of Incorporation.

Held: 1. That the Act 32 Vict., c. 54, was not *ultra vires* of the Local Legislature, under "The British North America Act, 1867," § 92, sub. sec. 10.

2. (Per Ritchie C.J., Allen & Weldon JJ., Fisher J. *dubitante*.) That an action of debt could not be maintained under the Act of Incorporation for the assessments on stock; but that the proceeding by sale of the shares must be adopted.

3. (Fisher J. *dissentiente*.) That the preamble of the Act 32 Vict., shewed that the object of the Legislature was not to alter the remedy given by the Act of Incorporation for the recovery of assessments, but to remove other difficulties; and that the words of sect. 2 did not give the Company a right to sue for assessments.

The Commercial Bank vs. Fleming.—In an action on a bill of exchange, the defendant claimed to set off the amount of a check pay-