

THE

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## NOVA SCOTIA

MEAGHER, J.

FEBRUARY 17TH, 1911.

GIFFORD v. CALKIN.

*Foreign Judgment—Judgment in the Supreme Court of New Brunswick by Default — Action upon in the Supreme Court of Nova Scotia—Implied Agreement to Submit Jurisdiction.*

This action was tried upon the following statement of facts:—

1. That sec. 52 of the Consolidated Statutes of New Brunswick, 1903, is as follows, and was the law of the province of New Brunswick prevailing in the city of Saint John in said province on the day of the issue of the writ and recovery of the judgment in the action in which said writ was issued, which judgment is sued upon herein:—

“Section 52. Defendant residing abroad.

“In case any defendant being a British subject in a suit to be brought in the Supreme Court is residing out of the jurisdiction of the said Court, the plaintiff may issue a writ of summons in the form (4) in schedule (A), which writ shall bear the indorsement contained in the said form, purporting that such writ is for service out of the jurisdiction of the Court, and the time for appearance by the defendant shall be regulated by the distance from New Brunswick to the place where the defendant is residing, having due regard to the means of and necessary time for postal or other communication; and it shall be lawful for the Court or a Judge upon being satisfied by affidavit that there is a