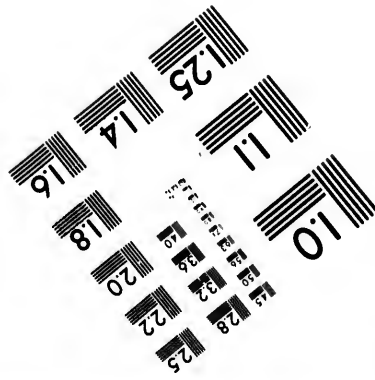
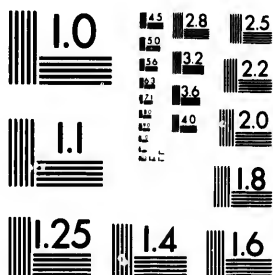


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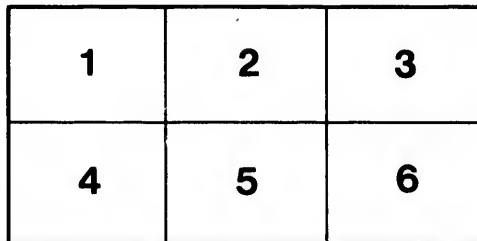
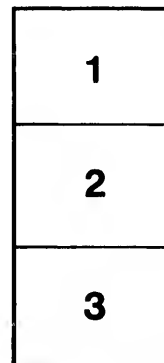
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A
CONCISE SUMMARY
OF THE
COLLECTION LAWS
OF THE
PROVINCE OF NOVA SCOTIA.

BY
HENRY W. C. BOAK, LL. B.,
Barrister - at - Law.

HALIFAX, N. S.,
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1886.

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A CONCISE SUMMARY
OF THE
COLLECTION LAWS
OF THE
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ACTIONS.—Action is the term applied to all civil proceedings commenced by writ of summons or in such other manner as may be prescribed by rules of Court. It does not include criminal matters. Actions may be brought, either in the Supreme Court or County Courts, according to the nature of the relief sought and the amount involved.

After service of the summons, if the defendant is within the jurisdiction, he has ten days to appear, if he does not appear within that time and the writ has been specially endorsed, judgment may be entered and execution issued without further notice to him.

If he does appear but has no defence to the action the Court will, on motion, supported by affidavits proving the claim and negating a defense, order judgment to be entered against the defendant.

In actions brought by persons residing without the Province the Court will order security for the defendant's costs to be given.

ADMINISTRATION OF ESTATES OF DECEASED PERSONS.—The nearest of kin are entitled to administration of the estate of deceased persons; but if they neglect to take out administration within a time limited, after being cited to do so, any creditor can

obtain a grant of letters to himself upon giving the security required.

The Court of Probate of the County wherein the deceased last dwelt has jurisdiction in the matter of his estate.—*See Court of Probate.*

AFFIDAVITS.—Affidavits for use either in the Supreme or County Courts, if made within the Province, must be sworn before commissioners appointed for that purpose. If made without the Province, for use in either of said Courts, they must be sworn before commissioners appointed by the Government of Nova Scotia to take affidavits for use in our Courts, which commissioner must attach his seal of office thereto; or before a Judge of any Court of Justice who must attach the seal of the said Court or a certificate that such Court has no seal. Such certificate must be written on the same paper as the affidavit immediately after the Judge's signature.

APPEALS.—An appeal lies to the Supreme Court from judgment delivered in the County Courts and by Judges at "Nisi Prius" Sittings.

From the judgments of the Supreme Court, appeals may be taken to the Supreme Court of Canada and (or) to the Privy Council in England. In almost all cases appealed security has to be given.

ARREST.—A defendant may be arrested and held to bail in any action when the plaintiff or some person on his behalf shows to the satisfaction of a Judge or commissioner, by affidavit, that the plaintiff has a cause of action against the defendant to the amount of \$20 or upwards, or has sustained damage to that amount and that the plaintiff has probable cause for believing and does believe that the defendant is about to leave the Province and that he fears the debt will be lost unless the defendant be forthwith arrested.

Any defendant so arrested may give security to respond any judgment which the plaintiff may recover in the action and will then be released; or he may negative under affidavits the fact of his being about to leave the Province, and if he does so to the satisfaction of a Judge will obtain his discharge, or he may, by petition to commissioners appointed for that purpose, apply for relief as an indigent debtor.

After final judgment has been obtained in an action the defendant or person against whom the judgment is, may be arrested under execution issued on the judgment, and be kept in custody until he satisfies the judgment or is released as an indigent debtor. In certain towns in the Province there exist "Jail limits" within which a debtor may have his liberty upon giving security according to the provisions of the act creating such limits.

ASSIGNMENTS.—It is now lawful for debtors to make preferential as well as general assignments of their property for the benefit of their creditors and such assignments, if not tainted with fraud or otherwise bad in law, cannot be impeached.

A debtor who has been arrested, under either mesne or final process, will be compelled to assign all his property to the judgment creditor in trust for the payment of the judgment debt before he will be granted his discharge.—*See indigent debtors.*

ATTACHMENT.—There are three classes of attachments, viz: of debts, of goods and of persons.

1. Of Debts. A judgment creditor may, upon proof by affidavit of the existence of a debt due the judgment debtor from a person within the jurisdiction of the Court, obtain an order attaching the debt and directing its payment to him on account of his judgment.

2. Where a person absconds from the Province of Nova Scotia, any creditor whose claim amounts to \$20 may, after the commencement of his action, sue out a writ of attachment and thereunder levy on the property of the defendant and may, also, by serving a summons upon any person who is an agent or trustee of the defendant attach all goods and money in his possession belonging to the defendant. The property of foreign companies or bodies corporate doing business by an agent within the Province, may be attached to respond the plaintiffs judgment in a similar manner.

3. A judgment for the recovery of any property other than land or money may be enforced by writ of attachment.

A judgment, requiring a person to do any act other than the payment of money or to abstain from doing anything, may be enforced by writ of attachment. A judgment for the payment of money may be enforced by writ of execution.

BILLS OF SALE AND CHATTEL MORTGAGES.—All bills of sale and chattel mortgages to be valid against subsequent encumbrancers or executions must be fyled in the Registry of Deeds in the County where the property affected is situated and must be accompanied by the affidavit of the mortgagor or seller proving the bonafides of the debt, for which the bill of sale or mortgage was given. Property covered by bills of sale or mortgages, is liable for rent due on the premises where it is contained and, if in the City of Halifax, for local taxes on said property.

COMMERCIAL PAPER.—Bills of Exchange and Promissory Notes are payable to order or bearer; are negotiable and transferable, the former by en-

dorsement, the latter by mere delivery. The indorser is released if the holder fails to present for payment, does not give proper notice of dishonor or enters into any arrangement with the maker by which the indorser is prejudiced.

Stamping of bills and notes has been abolished. Three days grace are allowed and if the last of these fall on a legal holiday, or other *dies non*, the delay is extended to the next following business day. Notes or bills payable on demand are not included in the above rule.

The acceptance of a Bill of Exchange must be in writing.

Protest *prima facie* fixes the liability of endorsers.

A lost bill or note may be sued on by the person entitled, on his giving indemnity to the defendant against the claims of any other person on the lost paper.

CORPORATIONS.—All local corporations can sue and be sued in their corporate name. They have the power, unless other provision is made, to adopt by-laws and regulations not contrary to law nor repugnant to their charter for their own government and the management of their affairs.

The shares of the stockholder are personal property for all purposes.

The individual members of a corporation are liable as partners for its debts and obligations unless its charter exempts them from such liability.

The members of joint stock companies incorporated under the "Nova Scotia Joint Stock Companies Act" are only liable to creditors of the company to an amount equal to the amount not paid up on their shares.

COURTS—The Supreme Court is a Court of Record and has jurisdiction within the Province, both original and appellate. It possesses the same powers formerly exercised by the Courts of Queens Bench, Common Pleas, Chancery and Exchequer in England and all such and the same powers as are now exercised in England by the Supreme Court of Judicature save in respect of Probate and Surrogate Courts.

It has jurisdiction in all civil actions, *ex contractu*, where the amount claimed is \$80 or upwards, and in all actions, *ex delicto*, no matter what the damages claimed.

The Court meets twice a year in each County in the Province for the trial of causes, and has one term, commencing in December and ending in April following, at Halifax, during which to hear appeals and arguments.

COUNTY COURTS.—This Court has not cognizance of any action—

1. When the title to land is brought in question.
2. In which the validity of any devise, bequest or limitation is disputed; except that an executor or administrator may be sued for the amount or part of the amount of a distributive share duly ascertained by the proper Court under an intestacy, or of any legacy under a will, provided that the amount sued for is within the jurisdiction of the Court.
3. For criminal conversation or seduction.
4. For breach of promise of marriage.

The Court has original jurisdiction in all actions *ex contractu* where the debt or damage does not exceed \$400. and in cases of debt where it is not less than \$20., and in all other actions where the damages claimed do not exceed \$200: In all actions on bail bonds to the sheriff in any case in the County

Courts; in all actions against sheriffs or any officer of the County Courts for nonfeasance or malfeasance in connection with any matter transacted in the County Courts.

The Court has also an appellate jurisdiction from all decisions, orders and judgments of Justices and Stipendary Magistrates and also in cases of Forcible Entry and Detainer.

The practice and procedure prevailing in the Supreme Court is with very trifling variation followed in the County Courts.

THE PROBATE COURT for each county has jurisdiction of the probate of wills, granting letters of administration to the estates of deceased persons and of all matters relating to the estates of such persons. Administration of an intestate estate shall be granted to —

1st. The widow or next of kin or to both as the Judge shall think fit.

2nd. If the persons entitled are judged incompetent or neglect, after being cited for that purpose, to take administration, then one or more of the principal creditors or any other competent person on the application of one or more of the principal creditors may be appointed.

3rd. If the deceased be a married woman, her husband is entitled to administration unless the deceased shall have, by force of a marriage settlement, made some disposition of her estate which shall render it necessary and proper to appoint some other administrator.

Administrators are required, in every case, to give security for the right performance of their trust.

In the settlement of the estate of an intestate, the whole of his property, after paying expenses of last

illness and probate charges, shall be distributed among the creditors who have filed attested accounts within the period prescribed in the following manner:—

1st. Clerks, domestics and farm servants and rent to be paid in full for the last year previous to the death; the excess, if any, to stand on the same footing as other claims.

2nd. All other creditors to be paid in proportion to the amount of their respective claims.

Appeals lie from the Probate Court to the Supreme Court, in banc.

The Judge of the Court of Probate may declare, by decree, the estate of any deceased person to be insolvent, and the executor or administrator of such person is entitled to plead such order in bar of any action brought against him on account of contract connected with the deceased's estate.

VICE ADMIRALTY COURT.—The matters, in which jurisdiction has been conferred upon the Vice Admiralty Courts, are claims:—

1. For seaman's wages.
2. For master's wages and disbursements.
3. In respect of pilotage.
4. For salvage of life or goods.
5. For towage.
6. In respect of bottomry or respondentia bonds.
7. In respect of mortgage where the ship has been sold by a decree of the Vice Admiralty Court and the proceeds are under its control.
8. Between the owners of a ship, registered in the possession in which the Court is established, touching ownership, possession, employment or earnings.
9. For necessaries supplied in the possession in

which the Court is established, where no owner or part owner is domiciled within the possession at the time of the necessaries being supplied.

10. In respect of building, equipping or repairing (with similar restrictions as to domicile).

11. In cases of breach of the Navy regulations and of Admiralty droits.

THE DIVORCE COURT.—The Divorce Court is presided over by the Judge in Equity for the time being. It has jurisdiction over all matters relating to prohibited marriages and divorce, and may declare any marriage null and void for impotence, adultery, cruelty, or kindred within the degrees prohibited in 32 Hen. VIII.

DEEDS AND MORTGAGES.—Deeds and mortgages must be executed in the presence of, at least, one witness; and must be proved by the oath of that witness, certified, if made within the Province, by a Notary Public or Justice of the Peace, and if made without the Province in the manner hereinafter specified for the taking acknowledgements of married women without the Province.—*See married women.*

The following is the form of certificate to be written on the deed—

I CERTIFY, that Subscribing
Witness to this Deed, made oath before me that the
same was signed and executed in his presence, by the
therein named

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Deeds and Mortgages have priority from the time of registration in the Registry of Deeds for the County in which the lands affected thereby are situated.

If the wife of the grantor joins in the deed she must acknowledge the release of her dower in the

manner prescribed for other acknowledgements by married women vendors.

DEPOSITIONS.—The depositions of witnesses residing out of the Province can be taken under commission, issued by the Court in which the cause is pending, to a competent person in the state or country where the witness resides. Witnesses residing in Nova Scotia, whose testimony is required under commission issued by a Court in any other country, can be compelled, by process of the Supreme Court, to appear and give their evidence.

EXECUTION.—All judgments, for the payment of money unconditionally, obtained in the Courts of the Province, can be enforced by execution issued thereon immediately after the judgment is signed. Personal property may be taken at once or the defendant may be arrested and compelled, before obtaining his discharge from custody, to make an assignment of all his property to the plaintiff in trust to pay the debt. Before real estate can be taken under execution the judgment must be recorded in the Registry of Deeds in the County where the land lies for one year.

FRAUDS.—No interest in land or mining areas or rights shall be assigned, granted or surrendered unless it be by deed or note in writing, signed by the grantor, etc., or his agent.

No action shall be brought in any of the following cases:—

1. To charge any executor or administrator upon any special promise to answer damages out of his own estate.
2. To charge a person, upon a special promise, to answer for the debt, default or miscarriage of another.
3. Upon any agreement made upon consideration of marriage.

4. Upon a contract for the sale of lands or any interest therein or in any mining areas or rights.

5. Upon an agreement that is not to be performed within one year from the making thereof, unless the promise, contract or agreement upon which such action is brought or some memorandum or note thereof, is in writing and signed by the party to be charged therewith, or by some person thereunto by him lawfully authorized.

No contract for the sale of goods, wares or merchandise for the price of \$40 or more shall be good or valid unless the purchaser accepts and receives part of the goods so sold or gives something in earnest to bind the bargain, or in part payment, or, unless some note or memorandum in writing of the bargain is made and signed by the party to be charged thereby or by some person thereunto by him lawfully authorized.

INDIGENT DEBTORS.—Any person imprisoned upon any writ of mesne, process, execution or attachment for non-payment of money, may exhibit a petition to a Judge of the Court from which the execution, &c., issued, or to two commissioners for the relief of indigent debtors accompanied by schedule of his assets and liabilities praying for his discharge from custody, when a summons shall be issued, calling upon the creditor at whose suit the debtor is imprisoned to show cause, on a day therein named, why the debtor should not be discharged. On that day the debtor is examined, and, if not proved guilty of fraud, will be discharged upon making an assignment of all property which he may have, except what is exempt by law, to the creditor in trust to pay the debt. If fraud is proved the debtor can be sentenced to imprisonment for any period not exceeding twelve months.

INTEREST.—Interest at the rate of six per cent (if no other rate is agreed upon) can be collected upon all debts or sums certain from the time the debt or sum became payable, if payable at a certain time under a written instrument; if otherwise, then from the time of the service of notice that interest will be claimed.

The legal rate of interest is six per cent. Judgments bear interest at that rate from the date of entry thereof; but no more than six years overdue interest can be recovered either on judgments, mortgages or simple contracts without a written undertaking to pay more.

LIMITATIONS.—Actions on accounts, notes, bills, cheques and other simple contracts must be commenced within six years from the time when payment was due or from the time when the last payment thereon was made or the last written acknowledgment of the debt was given; and on judgments or contracts under seal within twenty years from the times before mentioned.

MARRIED WOMEN.—A married woman who is married without any settlement holds her property both real and personal free from the control and disposition of her husband and from his creditors. There is an exception in regard to property received by her from him during the marriage. Husband is not liable for debts contracted by wife before marriage, unless to the extent of any interest he may take in her property by virtue of any marriage contract. If a wife has separate property, it is liable for her debts.

All wages and personal earnings of a married woman and all acquisitions therefrom and all profits of any trade or occupation of the wife separate from

the husband, or derived from her literary, scientific or artistic skill, are in the disposition and control of a wife as freely as if she were unmarried.

A husband may insure his life for the benefit of his wife or a wife may insure (with his consent) her husband's life, or she may insure her own life, and any such insurance belongs to her and is free from claims of husband's creditors.

A married woman may hold stock, may make deposits in a savings bank and deal with same as if she were unmarried.

Marriage settlements may still be made and will have the same validity as before the 19th April, 1884.

A married woman may make deeds conveying her property, but such deeds, to be valid, must be joined in by her husband or afterwards confirmed by him by deed. Any deed or power of attorney executed by a married woman must be acknowledged by her before a Justice of the Peace or Notary Public, being a barrister in the Province of Nova Scotia; and if such women reside without the Province her acknowledgement may be taken before the Mayor of any city, the Judge of any Court of Record or a Justice of the Peace, a British Ambassador, Consul or Vice-Consul or a Commissioner appointed by the Government of Nova Scotia to take affidavits abroad and shall be certified in writing on such deed or power of attorney. If the acknowledgement is taken before a Mayor or Justice of the Peace his certificate shall be authenticated under the hand and seal of a Notary Public.

FORM OF CERTIFICATE.

Province of Nova Scotia, }
 S. S. }

Be it remembered that on this _____ day of
 A. D., 18 _____ before me
 the subscriber, personally came and appeared
 wife of _____ named in the foregoing
 Indenture, who having by me been examined separate
 and apart from her said husband did declare and ac-
 knowledge that she executed the said Indenture as
 and for her act and deed without fear thereat or
 compulsion of, from or by her said husband and for
 a full release of all her claims to the land (*or as the
 case may be*) therein described.

A married woman may conduct a separate business
 in the Province of Nova Scotia after obtaining a writ-
 ten consent from her husband so to do. Such
 consent must be recorded. The earnings and prop-
 erty of such business are free from the debts and
 control of her husband.

MECHANICS' LIEN.—Any contractor furnishing
 work or materials shall, provided he file the agree-
 ment and a statement of his claim before or during
 the progress of the work, or within thirty days from
 the completion thereof, have a lien for the price of
 the work done or materials furnished under the agree-
 ment upon the estate and interest of the person for
 whom such work is done or materials furnished, in
 the building, erection, or mine where such work is
 done, and in the lands occupied thereby. The state-
 ment to be filed must be sworn to, and must state the
 name and residence of the claimant, and of the owner
 of the property to be charged, and of the person for
 whom the work was done, as well as the time within

which the same was to be completed; also, the work done or materials furnished, the sum claimed to be due and the description of the land to be charged.

PARTNERSHIP.—Persons associated in partnership for trading or other purposes are required to file with the Registrar of Deeds in the county in which they intend to carry on business, a declaration in writing signed by the several members of such co-partnership, which declaration shall contain the names, surnames, additions and residences of each partner, the firm name, the time during which the partnership has existed and that the persons therein named are the only members of the firm and when ever any change is made in the composition of the firm a similar declaration must be filed. The contents of such declarations cannot be controverted by any person who has signed the same.

Partners may sue and be sued in the partnership name, but the defendant, in any action brought in a firm name, may demand and obtain the names of the persons constituting the firm.

REPLEVIN.—Personal property, including ships, may be replevied, after security has been given, to the extent of double the value of the property, by a plaintiff in an action brought for the purpose of obtaining possession of the property.

SHIPS.—All transfers of ships or of shares therein must be evidenced by Bill of Sale, executed according to the requirements of the Merchant Shipping Acts, and such Bills of Sale must be recorded in the Registry of Shipping in the place of registry of the ship affected by the transfer.

Mortgages of ships, to be valid, must also be, by document, under seal in the prescribed form and ought to be registered.

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