

ATTACHING PROPERTY OF THIRD PERSONS.

36. If the Sheriff shall attach personal property claimed by the person other than the person against whom the writ of attachment is issued, and such claimant shall within six days after the execution of the writ of attachment give the Sheriff notice (C) in Schedule; the Sheriff shall file a copy of the attachment and a copy of such claim, as well as a schedule of the property so claimed, with the Clerk of the County Court of the County in which such property has been attached.

37. The claim so made shall be tried at the next ensuing County Court, unless the Judge for good cause on the application of the plaintiff or claimant, postpone the trial to a future time.

38. The said copies of attachment and claim, with the schedule, shall constitute the record on which the trial of such claim shall be had, and on such trial the claimant shall begin by proving his right of property, and the plaintiff in the attachment shall have the right to dispose the same and to show the liability of such property to his attachment.

39. The jury shall be the same in number as on the trial of an issue joined in a civil suit in the County Court, and they shall be sworn well and truly to try such claim of property.

40. If the jury find for the claimant, the Sheriff shall restore to him the property or such portion of it as may be found to be the property of the claimant, unless it has been delivered to him on his giving a bond as hereinafter mentioned, and the claimant shall in such case recover his costs from the plaintiff in the attachment.

41. If the Jury do not find for the claimant, the plaintiff in the attachment shall recover from the claimant his costs of trying validity of the said claim.

42. Upon the notice of Claim (C) being served upon the Sheriff, if the claimant furnish to the Sheriff a Bond, with two or more sureties, in double the value of the property claimed, conditioned to pay to the said Sheriff the value of the said property, as also the costs of contesting the claim should the Jury not find in favor of the claim, then the said Sheriff shall deliver over the property to the claimant.

43. Such Bond may be assigned by the Sheriff to the plaintiff in the attachment if the Jury do not find for the claimant, and such plaintiff may bring an action in his own name upon such Bond, and thereupon recover the value of the property attached, and the costs of contesting the claim; and the action upon such Bond may be brought in the County Court, notwithstanding the amount sought to be recovered exceed two hundred dollars.

44. With the consent of the plaintiff in the attachment and the claimant, the trial of the claim by a jury may be waived, and the Judge of the County Court shall thereupon by affidavits determine the validity of such claim, and the decision of the Judge shall, subject to appeal to the Supreme Court, be conclusive against the parties, and the Judge in such case may make such order as to costs and all other matters as may appear just.

45. Should the claim be tried before a jury as aforesaid, either party dissatisfied with such finding may apply to the Judge for a new trial, which the Judge may grant or refuse as in the case of the trial in any other suit before him, subject, however, to an appeal to the Supreme Court.

CONTINUANCE AND ABATEMENT OF ATTACHMENT.

46. Property taken and held in attachment shall be holden for thirty days and no longer after final judgment, in order to its being taken in execution and in the case of a sale as before provided; the proceeds may be held for thirty days after final judgment, and in case of execution issuing be dealt with as though they had been realized upon execution.

47. If judgment be rendered for defendant the attachment shall be dissolved, and the Sheriff shall forthwith deliver up the property or the proceeds thereof in case of sale to the defendant, and the term "judgment" as herein used shall mean the ultimate judgment rendered in the cause on appeal, or otherwise as the case may be.

48. If the plaintiff delay for twenty days without consent of the defendant, or leave of the Court, or a Judge thereof, in taking any proceeding in the cause beyond the earliest time when he might have taken such proceeding as calculated from the preceding step in the cause, the attachment in any such case may, unless good cause be shewn for the delay, upon the order the Court, or a Judge thereof, be dissolved, and the Sheriff shall forthwith release the property, or the proceeds thereof in case of sale from the attachment.

49. If in an action, when defendant does not appear, the plaintiff delays proceeding to final judgment for sixty days after the earliest time wherein he could have obtained final judgment, unless such delay be at request of defendant, or by leave of the Court, or a Judge thereof, the attachment shall, upon order of the Court or a Judge, be dissolved, and the Sheriff shall forthwith release the property, or the proceeds thereof in case of sale from the attachment.

50. If the plaintiff does not recover in respect of the cause of action referred to in the affidavit on which the attachment is issued, the attachment shall upon order of the Court or a judge be dissolved, and the Sheriff shall forthwith release the property or the proceeds thereof in case of sale from the attachment.

51. If the writ in the cause is not served, the attachment shall be dissolved, and the Sheriff shall forthwith release the property from attachment; and in such case if reasonable efforts have been made to serve the writ in the cause, neither the Sheriff or the plaintiff shall without malice, be liable to the defendant in respect of such attachment.

52. When property is attached, and the defendant dies before it is taken in execution, the attachment shall be dissolved upon order of the Court or a Judge if administration of the estate of the deceased or letters testamentary are granted in this Province within three months after the decease, and when in such case the attachment is of goods, the Sheriff shall upon demand deliver up the goods, or in case of a sale their proceeds, to the executor or administrator within four months from the decease, upon receiving from the executor or administrator his legal fees and charges for attaching and keeping the goods, and the executor or administrator may recover such goods or proceeds from any person having them.

53. In case the Sheriff shall without notice of the death of the defendant have taken and sold the attached property in execution, or shall have paid the proceeds arising from such property, whether on execution or in case of personal property on sale as herein provided, or on execution to any person claiming the same, the executor or administrator may recover such proceeds in an action or actions against the