

245. The affidavit in support of an application under Rule 238 shall state—

- (1.) That the person issuing the summons does not claim any title to the chattels, or is willing to perform the duty claimed to whichever of the claimants may be entitled thereto.
- (2.) That adverse claims have been made by the persons summoned, and the steps which have already been taken by the adverse claimants in support of their respective claims.
- (3.) That the person issuing the summons does not collude with either of the claimants, but is ready to bring into Court or dispose of the chattels claimed, or secure the performance of the duty, in such manner as may be ordered.

WRONGFUL DISTRESS.

246. The proceedings in an action for an illegal distress, when the chattels seized have been replevied, shall be the same as in an ordinary action.

247. If the plaintiff in such action be nonsuited at the trial, or the defendant obtain judgment, the defendant may prove the amount due for rent in arrear at the time of distraining, and may sign judgment for such amount, whatever may have been the value of the chattels distrained.

WRIT OF ARREST.

248. A writ of arrest for the purpose of arresting any defendant about to leave the colony shall be in the Form No. in the Schedule hereto, and shall specify the purpose for which the defendant is to give security

249. Such writ shall empower the officer to whom it is directed to arrest the person named therein, and to commit him to such custody as may be by law allowed, until he shall have given to such officer sufficient security for payment of any sum of money, or for the performance of any act, or not to quit the colony without leave of the Court, or otherwise as may by the writ of arrest be required.

250. When a defendant is required to give security for the payment of a sum of money, he may pay such sum of money into the hands of the officer executing the writ of arrest, but may obtain repayment thereof at any time on giving to such officer sufficient security for the payment thereof.

251. The Court or a Judge may, at any time after judgment, order that any sum of money so paid or secured, or any part thereof, be paid over to a successful plaintiff, or that any security given by a defendant under a writ of arrest be put in force by the officer to whom it has been given for the purpose of such order.

252. Any person arrested under a writ of arrest may at any time apply to the Court or a Judge to be discharged from custody, on the ground of having been wrongfully arrested or of being wrongfully detained in custody, and the Court or Judge on such application may make such order as to the discharge of the defendant or otherwise as may appear just.

PART VI.

COSTS.

253. In addition to any special powers as to costs hereinbefore conferred by these rules upon the Court or any Judge thereof, it is hereby expressly provided that the costs of and incident to any action or other proceeding shall be in the discretion of the Court, subject, however, to any special provision as to costs contained in any statute or in these rules; but, when no order is made by the Court or a Judge, the right to costs in the several cases mentioned in these rules shall be regulated by the provisions of such rules respectively

254. The successful party in any action, issue, or proceeding shall be entitled to the costs of the action, issue, or proceeding, unless the Court shall otherwise order.

255. In all actions upon any judgment recovered in any Court, except judgments on bonds, the plaintiff shall not be entitled to any costs.

256. If there be several defendants and the plaintiff have a verdict against them, each of them is liable to the plaintiff for the entire costs, even although they defend separately

257. Plaintiffs suing in a representative character shall be liable to pay costs to the defendant in case of a nonsuit or of a judgment for the defendant.

258. When the Judge, at the trial of any action, has made an order allowing an unsuccessful party costs under any rule herein contained, the amount of such costs shall be ascertained by the proper officer and deducted from the costs (if any) allowed to the successful party

259. When the statement of claim contains more than one cause of action, and the plaintiff succeeds on one or more causes of action, and the defendant succeeds on another or others, costs shall be allowed to the plaintiff on the cause or causes of action on which he succeeds, and to the defendant on the cause or causes of action on which he succeeds, in the same manner as if separate actions had been brought on the cause or causes of action on which each party respectively has succeeded.

260. When the plaintiff succeeds in his action, and the defendant succeeds in a counter claim, costs shall be awarded as if each party respectively had succeeded in an independent action.

261. When several defendants defend an action separately, costs may be disallowed to all of such defendants except one, or to any of such defendants if it appear that the defendants or any of the defendants might have joined in their defence.

262. Costs (when allowed) shall be regulated and paid according to scale of costs contained in the Schedule hereto, and the amounts of costs shall be determined and decided by the Judge at the trial.