Thomas Cockey, Garnishee of Jonathan Forward v. Thomas Bordley. Attachment upon judgment discussed above.[1]

It has been stated that attachments were made use of with extraordinary frequency. Luther Martin, in arguing a case in 1797,[2] said that from the year 1658 to the year 1748 only nine cases were to be found in which attachments had issued out of the provincial court, but a count of the cases found in one record of that court, that of proceedings between the years 1657 and 1662,[3] shows nine attachments such as he had in mind. Attachments were not ordinarily indexed under a heading of their own. They are found in use from the beginning of the province, the first statutes passed merely regulating them as existing remedies,[4] and in discussions of the eighteenth and nineteenth centuries they were supposed to have been derived, in Maryland as well as in England, from the custom of foreign attachment in the Lord Mayor's Court of London; but seizure of an absent man's goods in place of his person was an obvious expedient, adopted in other towns in England and found on the continent as well as in London.[5] The practice followed in Maryland was similar in its essentials to that in the Lord Mayor's Court. Indeed, the essentials were the same everywhere and would seem to require naturally the same precautionary and protective steps: the assurance that the defendant was out of reach of ordinary process, a degree of publicity for the attachment of his goods, proof of a claim against him, an opportunity to a garnishee to contest the seizure, condemnation, and, finally, an opportunity to the defendant to follow and disprove the propriety of the seizure.

During the first century of the province, nine regulating statutes were passed, beginning with an act of 1642,[6] each one after the first amplifying or modifying the preceding; and the fact affords evidence of the local importance of the remedy. The earliest attachment case in this record, and the first case in the book, was brought subject to the provisions of an act of 1683,[7] which, continuing some of the provisions of earlier acts, provided that in a suit against a resident but absent defendant no attachment should be permitted before summons had been issued twice, and the defendant had upon each been returned not found, and that then condemnation of the goods might be had only after a copy of the declaration in the suit, or a short note of the cause of action, should be left upon any attorney of the absent defendant or at his house. If the defendant was not a resident, then proof of the fact was sufficient ground for the issue of the attachment. The right of action must then have been proved; and condemnation followed upon the plaintiff's giving security conditioned to make restitution if the defendant should appear within a year and a day—one of the scattered fragments of the ancient rule of limitation[8]—and show that the debt was satisfied or paid, or

1 Above, p. xli, etc.

2 Davidson *v.* Beatty, 3 Harris & McHenry, 594, 613.

3 *Archives,* XLI, 1, 8, 82, 114, 186, 204, 406, 441, 517.

4 See commission to justices of the Isle of Kent (1637), *ibid.,* III, 62.

5 M. Bateson, *Borough Customs* (Selden Society, London, 1905–06), XVIII, 127–129, 192; XXI, lvii; W. Brandon, *A Treatise upon the Customary Law of Foreign Attachment* (London, 1861), p. 211; Lapsley, *The County Palatine of Durham,* p. 202; Story, *Conflict of Laws,* sec. 549.

6 Ch. 53, *Archives,* I, 195.

7 Ch. 2, *ibid.,* VII, 606.

8 Maitland, *Collected Legal Papers,* II, 61 *et seq.;* Coombs *v.* Jordan (1841) 3 Bland Chancery, 323.