

codified from the Act of 1801, ch. 74, secs. 11, 12, and, it would seem, from 1787, ch. 87, sec. 1, it is provided, that no person shall be sued out of the county in which he resides, until he has been returned *non est* on a summons issued in that county, provided, that the section shall not apply to any one who shall abscond from justice in the county in which he lives, but such person may be sued in any county where he may be found, nor to ejectment, dower, replevin, *scire facias* on judgment or decree, nor to heirs, devisees, or terre-tenants, against whom process may be issued to another county. It is evident that this latter clause does not include all the actions excepted from the operation of the section,⁴ see *Patterson v. Wilson supra*, and the next section codified from the Act of 1785, ch. 87, sec. 4,⁵ goes on to provide, that if any trespass shall be committed on any real property, and the person committing the same shall remove from the county where such property shall lie, or cannot be found in such county, such trespasser may be sued in any county where he may be found—an affirmation of the rule that actions for trespass to

against whom process may be issued to another county." (Code 1911, Art. 75, sec. 147.)

A person sued out of the county in which he resides may raise the question of his non-residence either by motion for *non pros.* supported by affidavit, or by plea in abatement. *Hamilton v. State*, 32 Md. 348. Where the question is presented by motion, it is the duty of the court to determine it without a jury on affidavits, or such other proof as the court may require. *Gittings v. State*, 33 Md. 458. Where it is presented by plea, it is a preliminary question for a jury and until that is settled the defendant is under no rule to plead. *Tyler v. Murray*, 57 Md. 418.

A motion for a *non pros.* on the ground of the defendant's non-residence should not be allowed after the time within which dilatory pleas may be filed. *State v. Gittings*, 35 Md. 169; *Yoe v. Gelston*, 37 Md. 233.

As to what is "carrying on any regular business," &c. under this section, see *Gemundt v. Shipley*, 98 Md. 657; *Cromwell v. Willis*, 96 Md. 260; *Chappell v. Lacey*, 77 Md. 172.

The burden is on the defendant to show his exemption from suit under this section. *Gambrill v. Schooley*, 95 Md. 260.

As to his waiving his right to such exemption by a general appearance to the suit, see *Gemundt v. Shipley supra*; *Gittings v. State supra*. Cf. *Fairfax Co. v. Chambers*, 75 Md. 604; *Ireton v. Baltimore*, 61 Md. 432; *Harrison v. Morton*, 87 Md. 671.

It was held in *Baltimore Turn. Co. v. Crowther*, 63 Md. 558, that the word "person" in the above section did not include a corporation, but since the Act of 1888, ch. 36, (Code 1911, Art. 1, sec. 14), this is no longer the law, at least in the case of a corporation which is not incorporated under the general law and which is not a municipal corporation. See *Henderson v. Ins. Co.*, 90 Md. 47, 50; *Phillips v. Baltimore*, 110 Md. 431, 436.

⁴ This was also held in *Crook v. Pitcher*, 61 Md. 510.

⁵ Code 1911, Art. 75, sec. 148.