

of issuing it; and the plaintiff shall give notice of the issuing of such attachment in the same manner as in case of attachments before a justice against non-resident or absconding debtors; and a writ of summons shall also be issued with such attachment, as is usual in cases of debt before a justice, and the proceedings on such attachment shall conform as near as practicable to the practice and proceedings under writs of attachment against non-resident or absconding debtors, issued by a justice of the peace.

See notes to sections 36 and 39.

See art. 52, sec. 43, *et seq.*; also, art. 52, sec. 71.

Attachments in Actions Ex Contractu for Unliquidated Damages and in Actions for Wrongs Independent of Contract.

1904, art. 9, sec. 44. 1888, art. 9, sec. 43. 1888, ch. 507.

44. Attachments may also be issued against non-resident or absconding debtors in cases arising *ex contractu*, where the damages are unliquidated, and in actions for wrongs independent of contract; but in such cases no attachments shall issue until a declaration shall have been filed, setting out specially and in detail the breach of contract complained of, or the tort actually committed, verified by the affidavit of the plaintiff or some one on his behalf, and until a bond shall be filed, similar in all respects to the bond required to be given in cases of attachments on original process for fraud, as prescribed by section 39 of this article. In cases arising under this section, the practice and pleadings shall in all other particulars conform to the practice and proceedings against non-resident and absconding debtors in actions *ex contractu* for liquidated damages.

When damages are unliquidated.

Whether damages for breach of contract are liquidated or unliquidated, depends on whether the contract itself fixes the amount, or furnishes a standard by which the amount may be determined with sufficient certainty to enable the plaintiff to make oath to his claim. And damages are not unliquidated because less than is claimed may be ultimately recovered—matters of defence in mitigation of damages, do not affect the standard of damages. *Dirickson v. Showell*, 79 Md. 53; *Warwick v. Chase*, 23 Md. 160. See also, *Smithson v. U. S. Telegraph Co.*, 29 Md. 166; *Steuart v. Chappell*, 98 Md. 531; *Keen v. Whittingdon*, 40 Md. 497; *Blick v. Mercantile Trust Co.*, 113 Md. 490.

An attachment by a lawyer for professional services, in the absence of an agreement as to the amount to be paid, is for unliquidated damages, and the procedure must follow this section. *Steuart v. Chappell*, 98 Md. 531.

Damages arising from a breach of a complicated agreement embracing many things to be performed, are unliquidated. *Hough v. Kugler*, 36 Md. 194.

And see notes to sec. 4.

Generally.

This section applies to an original proceeding only, and can not be made ancillary to an attachment on two *non ests*. An affidavit (as prescribed in section 4), must accompany the declaration, account and bond. *Steuart v. Chappell*, 100 Md. 541.

And see notes to sec. 39.