

trial until the second term, and if, when said case is called for trial, the appellant is not ready to prosecute his appeal, the court, instead of hearing said case *de novo*, shall affirm the judgment of the justice of the peace, with costs against the appellant, and if there be cross appeals, the court shall affirm the judgment of the magistrate, as against the defendant side of the case below where the defendant appealed, and is not in court ready for trial when said appeal is called for hearing; provided, the party appealing shall dismiss his appeal, and if he does not, the court shall proceed to hear said cross appeals *de novo*.

An. Code, sec. 91. 1904, sec. 91. 1888, sec. 88. 1852, ch. 76, sec. 3. 1852, ch. 336.

97. If two summonses be returned *non est*, or one summons be returned served, the court may hear and determine the case *ex parte*.

Where there is only one return of "*non-est*," the court is without jurisdiction. *Mears v. Remare*, 33 Md. 251.

Where the city court proceeds prior to the return of two *non-ests*, and its action is reversed on appeal, the case will be remanded to the city court as if no trial had occurred there. *Mears v. Remare*, 34 Md. 334.

An. Code, sec. 92. 1904, sec. 92. 1888, sec. 89. 1791, ch. 68, sec. 4. 1829, ch. 236. 1852, ch. 239, sec. 3.

98. No appeal from a judgment of a justice of the peace shall stay execution, unless an appeal bond, in double the sum recovered, with approved and sufficient security, be filed with the justice, with condition that if the party appealing shall not prosecute his appeal at the next circuit court for the county, or the next term of the Baltimore city court, with effect, and also pay and satisfy the party in whose behalf the judgment of the justice shall be given, his executors, administrators or assigns, in case the said judgment shall be affirmed, as well the debt, damages and costs adjudged by the justice from whose judgment such appeal shall be made, as also all costs and damages that shall be awarded by the court before whom such appeal shall be heard, tried and determined, then the said bond to be and remain in full force and virtue, otherwise to be of none effect.

An appeal bond is necessary to stay execution in a replevin suit. *State v. Carrick*, 70 Md. 591.

No recovery can be had on an appeal bond conditioned to prosecute an appeal from the judgment of a court which has no existence; such a bond does not operate to stay execution. *Tucker v. State*, 11 Md. 329.

For a case construing the act of 1829, ch. 236, see *Brewer v. Smith*, 3 Gill, 304. Cited but not construed in *Harris v. Register*, 70 Md. 116; *O'Neale v. Long*, 4 Cranch. 60.

See sec. 57, *et seq.*, and notes to sec. 92.

An. Code, sec. 93. 1904, sec. 93. 1888, sec. 90. 1825, ch. 68, sec. 1.

99. When an appeal bond shall be filed with sufficient securities, the said appeal shall operate as a *supersedeas* to any execution on said judgment, notwithstanding a levy may have been made; provided the said appeal shall be taken and the bond filed within sixty days after judgment, and the party appellant first pays or tenders payment to the officer making such levy, of all legal fees which shall have accrued on said levy.

It is no defense to a suit on the bond that it was executed more than sixty days after judgment entered. Object of the act of 1825, ch. 68. *Brewer v. Smith*, 3 Gill, 302.