

Where A. gives B. a note and subsequently and before the maturity of the note B. attaches on the ground that the debt was fraudulently contracted, B. may disaffirm the note and file an open account for money had and received as a voucher in the attachment case. *Summers v. Oberndorf*, 73 Md. 312.

If on appeal, though the vouchers are not in the record, it appears that they were filed, the court will not assume their insufficiency. *Johnson v. Stockham*, 89 Md. 380.

An. Code, sec. 5. 1904, sec. 5. 1888, sec. 5. 1795, ch. 56, sec. 1. 1876, ch. 112. 1888, ch. 507.

5. The affidavit required by the preceding section may be made before any justice of the peace or any judge of a court of law of this State, or before any judge of a court of record of the United States, or of any State, district or territory of the United States, or before a commissioner appointed by the State to take acknowledgments of deeds, or before a notary public or if out of the United States, before a consul or vice-consul of the United States; or the affidavit may be made before the clerk of the court from which the attachment shall issue.

An. Code, sec. 6. 1904, sec. 6. 1888, sec. 6. 1795, ch. 56, sec. 2.

6. If the affidavit is made in this State, and before a justice of the peace or judge in any other county than that in which the attachment is to be issued, there shall also be a certificate, under the seal of the court, from the clerk of the circuit court for the county in which it is made, that the justice of the peace or judge before whom the said affidavit was made was, at the time the same was made, a justice of the peace or judge; or the same may be certified by the clerk of the superior court of Baltimore city, when the affidavit is made in that city; or if the affidavit be made out the State, and before a judge of a court of record, there shall be a certificate from the clerk of said court, under the seal thereof, that at the time the same was made he was a judge of said court, and that the same is a court of record; or if made before a commissioner of this State, the same shall be certified under his official seal.

The certificate attached to the affidavit is fatally defective if it does not show that the court presided over by the judge before whom the oath is made is a court of record. *Coward v. Dillinger*, 56 Md. 61; *Evesson v. Selby*, 32 Md. 344. See also *Prentiss v. Gray*, 4 H. & J. 200.

The Governor's certificate as to the power of the judge to take the affidavit, held to substantially comply with this section. *Washington v. Hodgskin*, 12 G. & J. 356.

An. Code, sec. 7. 1904, sec. 7. 1888, sec. 7. 1795, ch. 56, sec. 1. 1832, ch. 280, secs. 2 and 3. 1876, ch. 112.

7. The affidavit required by the preceding sections may be made by the creditor, or one of them where there are more than one, or by the agent of the creditor or creditors; by the president, cashier or other officer of a corporation; by any executor or administrator; or where the attachment is to be issued in the name or in behalf of an infant, by the guardian of such infant or by the infant himself; or by the husband of a *feme covert*, or by the committee of a lunatic.

The affidavit may be made by an agent as such, and need not state that the affiant is the agent of the plaintiff, or that the affidavit is made on behalf of the plaintiff. *Stockbridge v. Fahnstock*, 87 Md. 133.