

The two *non ests* must be in a case, which, if the defendant were summoned, the court could try in the exercise of its general jurisdiction. They must not be returns made in an attachment case under a special, limited and statutory jurisdiction. *Dirickson v. Showell*, 79 Md. 51; *Randle v. Mellen*, 67 Md. 189.

If the cause of action is the same as in a non-resident attachment and proved in the same way, the judge may order the attachment to issue. The proceedings are thereafter the same as in case of a non-resident attachment. A declaration filed at the time the attachment is issued, containing the common counts and a special count on the contract, is a sufficient short note. *Dirickson v. Showell*, 79 Md. 51.

This section is ancillary to a pending case. A creditor who amends his cause of action from a claim for liquidated to a claim for unliquidated damages cannot proceed by virtue of two *non ests* returned prior to the amendment. *Steuart v. Chappell*, 100 Md. 538.

A non-resident may be proceeded against under this section. *Steuart v. Chappell*, 98 Md. 530; *Barney v. Patterson*, 6 H. & J. 199.

A variance between the account filed at the time of issuing the attachment and that filed with the original declaration, is immaterial. *Steuart v. Chappell*, 98 Md. 530.

The lapse of a term between the award of the attachment and its issue, though an irregularity, is not fatal. An attachment under this section may be sued out of the United States circuit court in the name of the United States. *Boarman v. Patterson*, 6 H. & J. 182.

### **Attachments Against Adult Non-Resident Heirs and Devisees.**

An. Code, sec. 26. 1904, sec. 26. 1888, sec. 25. 1794, ch. 54, sec. 7.

**26.** If any person of full age residing out of this State, is entitled by descent or devise to any lands or tenements lying in this State, and the person from whom such lands descended or by whom the same were devised was indebted to any person, the court in which any suit against such heir or devisee may be instituted may award an attachment against the lands and tenements of such heir or devisee, held by descent or devise from the person so indebted, in the same manner and to have the same effect as attachments awarded against other persons residing out of the State.

See notes to sec. 36.

### **Sales of Attached Property.**

An. Code, sec. 27. 1904, sec. 27. 1888, sec. 26. 1839, ch. 39, sec. 1. 1876, ch. 254. 1892, ch. 642.

**27.** Any of the courts of this State in which any attachment suit is pending either on original or appellate jurisdiction, or any judge thereof in vacation, may order a sale of any property which may be levied on by virtue of such attachment whenever the court or judge may deem such sale expedient and for the better promotion of the ends of justice, on such terms and notice as the order may prescribe, and such sale may be ordered before or after the return of the attachment, and the proceeds of such sale after the payment of the expenses incident thereto, shall be paid into court and deposited with the clerk, subject to the order of the court on the final decision of the case.

The proceeds of sale remain subject to all liens and claims precisely as the property was. *Hall v. Richardson*, 16 Md. 410; *O'Brien v. Norris*, 16 Md. 130.

Cited but not construed in *Turner v. Lyttle*, 59 Md. 206.