

In an attachment under this section the question for decision is not whether the plaintiffs had good reason to believe defendant was defrauding his creditors, but whether such fraud was in fact committed; fraud not made out. An appeal lies from the action of the lower court on a motion to quash, though it involves an issue of fact. (This opinion refers to art. 9, sec. 26, but apparently sec. 36 was intended.) *Lang v. Shanawolf*, 137 Md. 18.

For a failure of proof that the defendant is about to abscond and that he has assigned, etc., his property with intent to defraud his creditors, see *Dumay v. Sanchez*, 71 Md. 513; *Clark v. Meixsell*, 29 Md. 230.

For a failure of proof that the debt was fraudulently contracted, the attachment being laid in the hands of a trustee for the benefit of creditors, see *Strauss v. Rose*, 59 Md. 533; *Clark v. Meixsell*, 29 Md. 229.

For proof that the debt was fraudulently contracted, see *Dumay v. Sanchez*, 71 Md. 514; *Thomas v. Brown*, 67 Md. 520.

Generally.

An attachment can be maintained before the maturity of the debt, where the affidavit avers that the debt was fraudulently contracted. *Summers v. Oberndorf*, 73 Md. 316.

But where the foundation of the attachment is that the defendant has assigned, etc., his property, with intent to defraud his creditors, and it is not alleged that the debt was fraudulently contracted, the plaintiff, having attached before the maturity of the debt, cannot uphold the attachment on the ground that it was fraudulently contracted. *Dellone v. Hull*, 47 Md. 116.

Although a debt may have been fraudulently contracted, if prior to the attachment the debtor has made a valid deed of trust for the benefit of his creditors, the attachment cannot affect property in the trustee's hands. This section is only a remedial act; it gives the creditor no lien, but only a more speedy remedy. *Horwitz v. Ellinger*, 31 Md. 492. See also *May v. Buckhannon Lumber Co.*, 70 Md. 448.

The rule day act of Baltimore city is not applicable to attachment cases. *Sanborn v. Mullen*, 77 Md. 480.

An attachment may be issued under this section against the property of a defendant alleged to have stolen money from the plaintiff. The term "indebted," as used in the attachment law, is not to be construed technically, or in a strict legal sense. The plaintiff's claim may be upon an implied contract. *Downs v. Baltimore*, 111 Md. 692.

And see notes to sec. 40.

An. Code, sec. 37. 1904, sec. 37. 1888, sec. 36. 1864, ch. 306, sec. 2.

37. At the time of making said affidavit the plaintiff shall produce the bond, account or other evidence of the debt, by which said debtor is indebted, and the same shall be filed among the papers in the cause.

See notes to sec. 4.

An. Code, sec. 38. 1904, sec. 38. 1888, sec. 37. 1864, ch. 306, sec. 3. 1888, ch. 507.

38. There shall be issued with every attachment issued under the provisions of the two preceding sections, a writ of summons against the defendant, as is usual in actions at law. The action shall be instituted either in the county where the defendant resides or where the property proposed to be attached may be located or found, or where the proposed garnishee resides; but if the action be instituted in any county other than that wherein the defendant resides, the writ of summons against the defendant shall be directed to the sheriff of the county wherein the defendant resides, returnable to the court in which the action shall be brought.

If the defendant is actually summoned in the county where the attachment is issued, the court has jurisdiction although the summons was not directed to the county of the defendant's residence. A substantial compliance with the terms of the statute is sufficient. The suit need not be brought in the defendant's home county. *Bonn v. Linders*, 116 Md. 54.