

An. Code, sec. 39. 1904, sec. 39. 1888, sec. 38. 1894, ch. 104.

39. Every clerk before issuing an attachment under the preceding section shall take from the plaintiff or some person on his behalf bond to the State of Maryland, with security, to be approved by said clerk, in double the sum alleged to be due by the defendant or defendants, conditioned for satisfying all costs which may be awarded to such defendant or defendants, or to any other persons interested in the proceedings, and all damages which the defendant or defendants, or any other persons interested in the proceedings, shall suffer because of the wrongful suing out of said attachment, which bond shall be filed in the office of the clerk issuing such attachment; the condition of said bond shall be substantially in the following form: The condition of this obligation is such, that whereas the above bounden _____ hath on the day of the date hereof, ordered an attachment out of (naming the court from which said attachment shall issue) at the suit of _____ vs. _____, for the sum of _____, and the same being about to be sued out of said court, returnable on the _____ day of _____ next; now if the said _____ shall prosecute his suit with effect, or in the case of failure thereof shall well and truly pay and satisfy the said _____ and any other person interested in the proceedings all such costs of said suit, and all such damages as he or they shall or may suffer or incur by reason of the wrongful suing out of such attachment, then the above obligation to be void, otherwise to remain in full force and effect. Every attachment hereafter issued without a bond and affidavit taken as aforesaid is hereby declared illegal and void and shall be dismissed.

The bondsmen are not released because the bond, through error, is payable to the defendant instead of to the state. *McLuckie v. Williams*, 68 Md. 263. But see *Wanamaker v. Bowes*, 36 Md. 42.

The sufficiency of the sureties is left to the clerk. *Stewart v. Katz*, 30 Md. 344; *Gable v. Brooks*, 48 Md. 108.

Where the principal and two sureties sign the bond, the fact that the fourth signature to the bond is unauthorized, does not defeat the liability of the remaining obligors. *Gable v. Brooks*, 48 Md. 113.

If the principal is not bound, neither are the sureties; and a party can not be both principal and surety. *Wanamaker v. Bowes*, 36 Md. 56.

That the bond was approved must appear from the proceedings. If it is marked "Accepted," though this is not signed by the clerk, such endorsement, coupled with the recital in the writ, is sufficient. *Howard v. Oppenheimer*, 25 Md. 363.

Where a bond is signed by "H. R. Agent," thus purporting to bind A. as principal in the bond but not doing so because unauthorized, "H. R." is himself bound as principal, and the bond is valid as to the sureties. *Stewart v. Katz*, 30 Md. 346.

The rule of court prohibiting attorneys from becoming sureties has no application to bonds under this section. *Lewis v. Higgins*, 52 Md. 618.

And see notes to sec 19.

An. Code, sec. 40. 1904, sec 40. 1888, sec. 39. 1864, ch. 306, sec. 5.

40. In all cases where two or more persons are jointly indebted, either as partners or otherwise, and an affidavit shall be filed as hereinbefore provided, so as to make one or more of such joint debtors amenable to the process of attachment, then the writ of attachment shall issue against the lands and tenements, goods, chattels and credits of such as are so brought within the provisions of this law; but the writ of summons shall issue against all the joint defendants, as in other actions against joint defendants.