

adverse party or his attorney, the said judge shall proceed to hear said petition and receive evidence and adjudicate thereon, in the same manner and to the same extent as he would be empowered to do while sitting in court at the return day of said writ, on motion to quash and set aside the same; provided, such petition shall not prevent the further execution of said attachment until the judge shall order the same to be quashed.

Matters jurisdictional—when motion to quash will be entertained.

A motion to quash is jurisdictional, and will be entertained at any stage of the trial. *Evesson v. Selby*, 32 Md. 347; *Bruce v. Cook*, 6 G. & J. 346; *Stone v. Magruder*, 10 G. & J. 384.

That the proceedings do not substantially comply with the statute, and hence the lower court had no jurisdiction, may be raised for the first time on appeal. *Coward v. Dillinger*, 56 Md. 61; *Mears v. Adreon*, 31 Md. 235; *Boarman v. Patterson*, 1 Gill, 379. See also *Mayer v. Soyster*, 30 Md. 403.

A motion to quash may be made by a garnishee even after confession of judgment. *Cromwell v. Royal Ins. Co.*, 49 Md. 379.

Where a garnishee fails to appear and move to quash until two years after judgment of condemnation entered, his motion comes too late. *Post v. Bowen*, 35 Md. 235.

Right of a defendant under this section pointed out. A motion to quash because no evidence of debt was produced when the attachment issued, when filed after verdict, comes too late. *Sugar Products Co. v. Kitzmiller*, 137 Md. 651.

Jury trial.

While in a case involving issues of fact, either party has a right to a jury trial, yet if both parties submit the questions to the court (without a jury) on motion to quash, the right to a jury trial is waived, and cannot afterwards be raised. *Howard v. Oppenheimer*, 25 Md. 365; *Gover v. Barnes*, 15 Md. 579.

The better practice is, however, to submit such matters to a jury. *Stewart v. Katz*, 30 Md. 347.

And even though the garnishee and claimant has elected to try his case before the court and the evidence has been partly taken, still he has the right to dismiss his motion to quash and file a plea so as to have the issues of fact passed on by a jury. *Ferrall v. Farnen*, 67 Md. 76.

Res adjudicata.

A motion to quash is jurisdictional, and a decision thereon, not going to the merits, does not support a motion to quash a second attachment on the same debt on the ground that the matter is *res adjudicata*. *Johnson v. Stockham*, 89 Md. 376.

Appeal.

No appeal lies from an order refusing to quash an attachment upon motion filed after the return day, but from an order quashing the attachment an appeal lies. *Steuart v. Chappell*, 98 Md. 527; *Parkhurst v. Citizens' Bank*, 61 Md. 259; *First National Bank v. Weckler*, 52 Md. 39; *Mitchell v. Chestnut*, 31 Md. 527; *Baldwin v. Wright*, 3 Gill, 245; *Deckelman v. Keisner*, 152 Md. 473.

See sec. 22 as to right of appeal from decision on motion to quash, filed before the return day.

Where a garnishee files a motion to quash, but no reasons in support thereof, the judgment will not be reversed on his appeal. *Robertson v. Beall*, 10 Md. 125.

On appeal from a decision on a motion to quash, the case should be presented to the court of appeals by bill of exceptions, or agreed statement or depositions. *Dumay v. Sanchez*, 71 Md. 512; *Maine v. Lynch*, 91 Md. 762; *Tyrell v. Hilton*, 92 Md. 184.

But a certificate of the presiding judge will be considered if signed, etc., as a bill of exceptions is required to be. *Palmer v. Hughes*, 84 Md. 659.

Generally.

If the defendant appears and judgment is entered against him in the short-note case, the judgment will not be arrested on any ground supporting a motion to quash. *Philbin v. Thurn*, 103 Md. 351.

Prayer for immediate return of writ and hearing granted under this section. Motion to quash attachment overruled—see notes to sec. 4. *Hedrick v. Markham*, 132 Md. 161.

If the attachment is quashed, the whole proceeding (including the short-note case where the defendant is not summoned and does not appear), fails. *Randle v. Mellen*, 67 Md. 188.

Where a judgment of condemnation *nisi* has been entered before the defendant appears, he should move to strike out the judgment before moving to quash. *Boarman v. Patterson*, 1 Gill, 379.

A defendant may appear in the attachment case for the purpose of moving to strike out the judgment of condemnation and to quash the execution thereon, without thereby being in the jurisdiction of the court so as to lay himself open to a personal judgment