

in an action of *assumpsit* brought at the same time as the attachment. *Potomac, etc., Co. v. Clyde*, 51 Md. 179.

A disability of the plaintiff to sue, should be raised by plea in abatement, and not by motion to quash. *Albert v. Freas*, 103 Md. 590.

At the hearing of a motion to quash, the plaintiff opens and closes. *Johnson v. Stockham*, 89 Md. 379.

No irregularity shown in writ. Motion to quash overruled. Defense raised under plea of *nulla bona*, rather than on motion to quash. *Indemnity Co. v. Cosgriff*, 144 Md. 663.

This section referred to in construing sec. 46. See notes thereto. *Sanitary Grocery Co. v. Soper*, 146 Md. 132.

An. Code, 1924, sec. 21. 1912, sec. 21. 1904, sec. 21. 1900, ch. 139, sec. 49.

21. In all cases where a motion to quash an attachment is made, and testimony is required to be taken in support of or against such motion, any party in interest shall have the right to have such testimony taken orally, in open court.

An. Code, 1924, sec. 22. 1912, sec. 22. 1904, sec. 22. 1888, sec. 21. 1852, ch. 155, sec. 2.

22. Either party shall be at liberty to appeal from the decision of the judge on said petition within two months thereafter.

An. Code, 1924, sec. 23. 1912, sec. 23. 1904, sec. 23. 1888, sec. 22. 1852, ch. 155, sec. 2.

23. If the judge shall quash said attachment, and the plaintiff shall appeal and give bond in such penalty and with such security as said judge may approve, conditioned to prosecute said appeal with effect, or in default thereof to pay such costs and damages as the absent defendant or other persons interested in said property or credits may incur, or suffer by reason of such attachment and appeal, the attachment shall remain in force as if no such petition had been filed.

See notes to sec. 39.

An. Code, 1924, sec. 24. 1912, sec. 24. 1904, sec. 24. 1888, sec. 23. 1852, ch. 155, sec. 2.

24. The party appealing under the preceding section shall have ten days from the date of the judgment quashing any such writ of attachment, within which he may file his appeal bond, and the writ of attachment shall remain in force during that time.

Cited but not construed in *Lanasa v. Beggs*. 159 Md. 313.

Attachments After Two Non Ests.

An. Code, 1924, sec. 25. 1912, sec. 25. 1904, sec. 25. 1888, sec. 24. 1715, ch. 40, sec. 2.

25. When two summonses have been returned *non est* against the defendant in any of the courts of law of this State, the plaintiff, upon proof of his claim as hereinbefore required, shall be entitled to an attachment, and the judge of the court where such action is pending shall order such attachment to issue, and the same proceedings shall be thereupon had as in attachments issued against absconding debtors.

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