

But the pendency of an attachment may be pleaded in abatement. If the garnishee compromise with the plaintiff for a sum less than the debt due by him (the garnishee) to the defendant, the compromise is valid as to the plaintiff, but it does not prevent the defendant from recovering the balance of his debt from the garnishee. *Brown v. Somerville*, 8 Md. 444. See also *Baldwin v. Wright*, 3 Gill, 241.

Attachments on Original Process for Fraud.

An. Code, 1924, sec. 36. 1912, sec. 36. 1904, sec. 36. 1888, sec. 35. 1864, ch. 306, sec. 1. 1892, ch. 510.

36. Every person and body corporate that has the right to become a plaintiff in any action or proceeding, before any judicial tribunal in this State, shall have the right to proceed by attachment in the following cases, upon the conditions and in the manner herein provided. Before any such writ of attachment shall be issued, the plaintiff or some person in his behalf shall make an affidavit before the clerk of the court from which said attachment shall issue, or before some officer authorized by the laws of the State of Maryland to take affidavits as enumerated in section 5 of this article, stating that the defendant or defendants, named in the writ of attachment, is or are *bona fide* indebted to the plaintiff or plaintiffs in the sum of _____ dollars, over and above all discounts; and that the plaintiff knows or has good reason to believe, either (first) that the debtor is about to abscond from this State, or (second) that the defendant has assigned, disposed of or concealed, or is about to assign, dispose of or conceal his property or some portion thereof, with intent to defraud his creditors, or (third) that the defendant fraudulently contracted the debt or incurred the obligation respecting which the action is brought, or (fourth) that the defendant has removed or is about to remove his property, or some portion thereof, out of the State with intent to defraud his creditors.

The affidavit.

A plaintiff need not confine himself to one of the disjunctive allegations, but may include them all. *Howard v. Oppenheimer*, 25 Md. 362.

As the statute requires the affidavit to state that "the plaintiff knows," etc., it will not do for someone making oath in behalf of the plaintiff to swear that "he (the affiant) knows," etc. *Dean v. Oppenheimer*, 25 Md. 377. But see *Stewart v. Katz*, 30 Md. 334.

A variance between the proof and the allegations of the affidavit, is fatal. *Dumay v. Sanchez*, 71 Md. 508.

And see notes to sec. 4.

The fact that the affidavit used in the case at bar is withdrawn from a former suit between the same parties brought about a year previous in another county is an irregularity and not jurisdictional, and hence does not sustain a motion to quash. *Bonn v. Linders*, 116 Md. 56.

What amounts to fraud.

No higher degree of proof is required for attachment when defendant is charged with having fraudulently contracted debt than when he is charged with having concealed or disposed of property. *Tire & Rubber Co. v. Tire Co.*, 175 Md. 490.

A deed of trust condemned by the law as fraudulent, is a foundation for attachment under this section—a fraudulent intent or purpose need not be shown *aliunde* the deed. *Whedbee v. Stewart*, 40 Md. 423. See also *Main v. Lynch*, 54 Md. 670.

The fact that in a deed for the benefit of his creditors, the grantor reserves property exempted by law from execution, does not make the deed fraudulent so as to entitle creditors to attach. *Muhr v. Pinover*, 67 Md. 480.

A transfer by one partner to the other of all his interest in the firm, held under the proof to be fraudulent, entitling firm creditors to attach. *Collier v. Hanna*, 71 Md. 253; *Franklin, etc., Co. v. Henderson*, 86 Md. 452.

For a failure of proof that the defendant has assigned, etc., his property with intent to defraud his creditors, and that the debt was fraudulently contracted, see *Johnson v. Stockham*, 89 Md. 358; *Strauss v. Rose*, 59 Md. 525; *Palmer v. Hughes*, 84 Md. 652; *Pitts v. Smelser*, 87 Md. 493.

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.