

Attachments in Actions Ex contractu for Unliquidated Damages and in Actions for Wrongs Independent of Contract.

An. Code, 1924, sec. 44. 1912, sec. 44. 1904, sec. 44. 1888, sec. 43. 1888, ch. 507.

44. Attachments may also be issued against non-resident or absconding debtors in cases arising *ex contractu*, where the damages are unliquidated, and in actions for wrongs independent of contract; but in such cases no attachments shall issue until a declaration shall have been filed, setting out specially and in detail the breach of contract complained of, or the tort actually committed, verified by the affidavit of the plaintiff or some one on his behalf, and until a bond shall be filed, similar in all respects to the bond required to be given in cases of attachments on original process for fraud, as prescribed by section 39 of this article. In cases arising under this section, the practice and pleadings shall in all other particulars conform to the practice and proceedings against non-resident and absconding debtors in actions *ex contractu* for liquidated damages.

When damages are unliquidated.

Whether damages for breach of contract are liquidated or unliquidated, depends on whether the contract itself fixes the amount, or furnishes a standard by which the amount may be determined with sufficient certainty to enable the plaintiff to make oath to his claim. And damages are not unliquidated because less than is claimed may be ultimately recovered—matters of defence in mitigation of damages, do not affect the standard of damages. *Dirickson v. Showell*, 79 Md. 53; *Warwick v. Chase*, 23 Md. 160. See also *Smithson v. U. S. Telegraph Co.*, 29 Md. 166; *Steuart v. Chappell*, 98 Md. 531; *Keen v. Whittington*, 40 Md. 497; *Blick v. Mercantile Trust Co.*, 113 Md. 490.

An attachment by a lawyer for professional services, in the absence of an agreement as to the amount to be paid, is for unliquidated damages, and the procedure must follow this section. *Steuart v. Chappell*, 98 Md. 531; *Gill v. Physicians', etc., Bldg.*, 153 Md. 396.

Damages arising from a breach of a complicated agreement embracing many things to be performed, are unliquidated. *Hough v. Kugler*, 36 Md. 194.

And see notes to sec. 4.

Generally.

This section applies to an original proceeding only, and cannot be made ancillary to an attachment on two *non ests*. An affidavit (as prescribed in sec. 4), must accompany the declaration, account and bond. *Steuart v. Chappell*, 100 Md. 541.

Objections to affidavit, declaration and voucher, overruled. No variance between affidavit and declaration. *Gill v. Physicians', etc., Bldg.*, 153 Md. 397.

Cited but not construed in *Amer. Surety Co. v. Kitzmiller*, 144 Md. 165 (see notes to sec. 13); *Lanasa v. Beggs*, 159 Md. 313; *Appel Sons v. State*, 167 Md. 628.

And see notes to secs. 39 and 47.

Several Attachments.

An. Code, 1924, sec. 45. 1912, sec. 45. 1904, sec. 45. 1888, sec. 44. 1867, ch. 418.

45. The plaintiff may have more than one attachment or writ of attachment, to be laid in the hands of different persons or levied on other property or effects than that taken under the first, though the first be still outstanding; provided, that but one satisfaction of the debt or demand shall be made, and that it shall be in the discretion of the court in all such cases, whether any costs, or if any, what amount of costs shall be allowed on the subsequent attachment or attachments.

An objection to an attachment overruled, in view of this section. *Hedrick v. Markham*, 132 Md. 165.

This section referred to in construing sec. 46. See notes thereto. *Sanitary Grocery Co. v. Soper*, 146 Md. 134.

An. Code, 1924, sec. 46. 1912, sec. 46. 1904, sec. 46. 1890, ch. 549, sec. 44A.

46. A writ of attachment may be served upon any person by way of garnishment wherever he may be found, either by the sheriff of the juris-