



**BERMUDA
1874 : 10**

ATTACHMENT ACT 1874

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SCHEDULE

Forms

[12 September 1874]

ATTACHMENT ACT 1874

[preamble and words of enactment omitted]

Writ of attachment

1 Any person having just cause of action at law for a sum exceeding \$14.40 against any person or persons absent from Bermuda, but who has, or, in case of joint contractors, one of whom has, been in Bermuda, having entered his action in the Registry and filed in the Registry an affidavit of the cause of action with an account in detail of the particulars of his demand, with the credits, if any, by him admitted, and having also given security by bond in Form A in the Schedule, with two sufficient sureties, of whom the plaintiff, or, in case of several plaintiffs, one of the plaintiffs may be one, to the Registrar in a penalty double the amount sworn to, conditioned for duly prosecuting such action, and for paying to the defendant and to any garnishee or garnishees such costs and damages as may be awarded to them by the Court in the same action or in any action in respect of the said attachment, shall be entitled to sue out a writ of attachment in Form B in the Schedule, and on such writ shall endorse the amount of the cause of action sworn to; and such writ may bear teste the day on which it is issued and shall be made returnable on the next return day, or if issued on a return day, on the same day or the next return day, at the option of the plaintiff; and the plaintiff shall be at liberty to insert the names of as many garnishees in such writ as he thinks fit either at the time of issuing it or at any time before the return thereof:

Provided that no action of trespass *vi et armis* or trespass on the case other than actions of trover or actions founded on contract shall be commenced by process of attachment under this Act.

Service of writ

2 (1) The officer to whom the writ is delivered for service shall serve the writ on every garnishee named therein by showing him the writ, and requiring him to answer on oath, or if the garnishee alleges that he has conscientious objections to an oath, on solemn affirmation, which oath or affirmation the officer serving the writ or any Justice of the Peace, is hereby authorized to administer, the interrogatories in Form C in the Schedule, and the officer serving the writ shall reduce the answers into writing and the garnishee shall sign the same, and the answers shall be returned with the writ into the Supreme Court.

(2) If any goods or money belonging to the defendant or any defendant named in the writ are found in the hands or power of any garnishee or garnishees, or if any garnishee is found to be indebted to any such defendant, then the officer serving the writ shall require the garnishee to deliver such goods or money or so much thereof as the officer may judge reasonably sufficient to meet the demand sworn to and costs, or to pay such debt to the officer forthwith:

Provided that if any goods are found in the possession of any garnishee supposed by the plaintiff but denied by the garnishee to be goods of the defendant it shall be lawful for the officer serving the writ to seize such goods, and to detain them for forty-eight hours, and then to return them to the garnishee unless the plaintiff or his agent in the meantime indemnifies the officer serving the writ for holding the goods subject to the issue of the suit, by the joint and several bond of two sufficient persons, to be approved by the officer serving the writ, in double the value of the goods so seized (which value the officer shall ascertain in a summary manner) conditioned for paying the officer all damages and costs to be sustained by him in respect of the seizing and holding of such goods; and in case such indemnity is given it shall be lawful for the officer to hold the said goods subject to the order of the Court in the action.

Execution of writ

3 (1) The writ of attachment shall be directed to the Provost Marshal General, or in his absence, or in case he is personally interested, to one of the coroners; and if by reason of the Provost Marshal General being personally interested the writ is directed to a coroner, the officer to whom it is directed shall serve the writ on the Provost Marshal General, and on all the other garnishees named therein and shall fully execute the same.

(2) It shall not be necessary to direct the writ to one of the coroners merely because the Provost Marshal General is made a garnishee by reason of his having or being supposed to have money or goods of the defendant in his hands as Provost Marshal General, but in such case it shall be lawful for the Provost Marshal General to detain such money or goods under the writ as if the money or goods had been regularly attached by him in the hands of another garnishee, subject to the order of the Court in the cause, and the Provost Marshal General shall with respect to such money and goods be treated as any other garnishee and shall answer the interrogatories on oath to be administered to him by any Justice of the Peace.

Penalties on person served

4 If any person served with a writ of attachment refuses to make or sign such answers, or to take the oath hereby required or to pay to the officer any debts due to, or to deliver any money or goods of, any defendant, then in the garnishee's possession or power or owing by him, or to give sufficient security to be approved by the officer serving the writ, for so delivering or paying the same within twenty days, or shall on being required so to do by the officer serving the writ refuse or neglect to give good security by the bond of two sufficient persons in a penalty of \$480 in Form D in the Schedule for the personal appearance of the garnishee at the hearing of the cause at the Regular Civil Session next after the

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return of the writ, or at the first Regular Civil Session at which under this Act the cause can be tried, there to answer such further interrogatories or questions as may be put to him, and otherwise to do and receive as the Supreme Court may order; then and in either of such cases the person so refusing or neglecting shall be conveyed by the officer serving the writ to a prison there to remain until he has complied with the requisites of this Act:

Provided that if any person served with any such writ pays to the officer serving the writ the amount sworn to in the action with the taxable costs such person shall be discharged from all further proceedings under the writ.

Time for payment

5 Whenever any garnishee, being served with any writ of attachment, acknowledges to owe to the defendant more than \$240, and the amount of the cause of action sworn to with the costs amounts to more than that sum, then the garnishee on giving sufficient and satisfactory security by bond to the officer shall be allowed six months for payment thereof if he desires it:

Provided that no debt attached under this Act shall be payable to the officer serving the writ before it would have been payable if not attached; and if the time of payment is more distant than six months then security for payment of the same shall be taken accordingly.

Perishable goods

6 (1) If any perishable goods, or goods likely if detained or kept to abide the issue of the suit materially to deteriorate or to be lessened in value, are attached under this Act, it shall be lawful for the Supreme Court or for a judge, on the application of the plaintiff, defendant or garnishee, or of the officer having the custody of the goods, on being satisfied on affidavit of the facts, to order such goods to be sold by public auction, and the proceeds of the same to be lodged in court to abide the issue of the cause, and the Court or a judge shall have the like power on being satisfied on affidavit that such a sale will be for the benefit of the party or parties concerned.

(2) If any one person purchases at any such sale goods to an amount exceeding \$1,200 then a judge shall have power to allow the purchaser to give security for the price to be paid within six months from the time of such sale by bond with sureties in such form and manner as the judge may by order appoint.

Order for release of goods on giving security

7 (1) Whenever any goods are attached under this Act it shall be lawful for the Supreme Court or a judge to order the goods to be released on the defendant or any garnishee giving sufficient security to the officer having the charge of such goods by the joint and several bond of two

sufficient persons to be approved by such officer either in double the value of the goods, or in double the amount sworn to in the action, as the Court or judge may order, conditioned for payment of the amount (if any) for which execution may issue in the cause.

(2) The value of the goods attached shall for the purposes of this section be ascertained in a summary way, by appraisalment or otherwise as the Court or judge making the order may direct, and the Court or judge shall have power to order a second or other appraisalment by such persons as the Court or judge sees fit to appoint, if satisfied that the circumstances of the case require it.

Trial of actions; judgment

8 (1) Every action to be prosecuted under this Act shall be tried and determined in the Supreme Court in the term in which the writ is returnable, if six months have then elapsed since the departure of the defendant from Bermuda, and, if not, then at the next Regular Civil Session of the Court, unless postponed at the request of the plaintiff or defendant or any garnishee for some sufficient reason to be allowed by the Court.

(2) Actions to be prosecuted under this Act may be entered in debt or assumpsit or otherwise as in ordinary cases.

(3) On every such trial judgment may, on proof of the plaintiff's demand, be entered for the plaintiff against the defendant for the amount found by the jury, together with costs of suit, in like manner as in ordinary cases when the defendant has been served with process and makes default in appearance; and upon such judgment the goods and chattels attached and received by the officer serving the writ may as far as may be necessary to satisfy the debt and costs be sold under execution and the proceeds thereof together with the money received by the officer, or so much thereof as may be sufficient, be applied in satisfaction of such judgment.

(4) No final judgment shall be obtained by default against any defendant in any action under this Act but every such action shall be tried before the Court and a jury.

Liabilities of garnishee

9 (1) Every garnishee shall be bound to attend on the trial, or in case of age, sickness or infirmity disabling him from attending the trial, then before a Commissioner to be appointed by the Supreme Court, to answer upon oath (or upon affirmation if such garnishee entertains conscientious objections to taking an oath) such questions as may be put to him for ascertaining the amount of the garnishee's debt to the defendant and of the defendant's property in the garnishee's hands, possession or power, at the time of the service of the writ, or at any time afterwards, or which having been in the garnishee's hands had been

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paid, discounted or otherwise disposed of to any other person in order to evade such attachment.

(2) If upon such trial any garnishee is found by the jury to be indebted to the defendant or to have in such garnishee's hands, possession or power any money or goods of the defendant or to have paid, discounted or otherwise disposed of any such debt, money or goods, for the purpose of evading the attachment of the same then judgment to the amount of the value thereof, to be ascertained in any manner which the Court may sanction, and for such costs as the Court may allow the plaintiff, may pass against the garnishee; and execution in the usual form may be issued against him, his goods and chattels, lands and tenements for the same.

Departure of garnishee

10 If any garnishee having been served with process under this Act is about to depart from Bermuda before the trial of the cause, and gives security by the joint and several bond of himself and two other persons to be approved by the plaintiff or by a judge in double the amount claimed, or in any less amount to be appointed by the plaintiff, conditioned for paying to the plaintiff such amount as the garnishee may be adjudged to pay in the cause with costs, or by depositing with the Registrar the amount sued for, or such less amount as the plaintiff may require, in money, with \$120 added for costs, and petitions the Chief Justice to take the oral examination of such garnishee at chambers, it shall be lawful for a judge to make an order for such garnishee to be examined at chambers accordingly in like manner as in the Supreme Court, in the presence of the plaintiff or his counsel, four days' previous notice of such examination having been given to the plaintiff or his counsel, or in the absence of the plaintiff and his counsel if they fail to appear after such notice, which notice shall in such case be proved on oath before the judge taking the examination, and such examination shall be taken down in writing and signed by the garnishee and shall be filed with the pleadings and shall on the trial of the cause be read if the garnishee be then absent from Bermuda, and shall be as valid and effectual, or of the like effect, as if given *viva voce* in open court, and on such examination being completed and signed a judge may make an order dispensing with the attendance of the garnishee on the trial and ordering any bond given by him for his appearance on the trial to be cancelled, and the bond shall be cancelled accordingly:

Provided that any garnishee who has been served with process under this Act may at any time apply to a judge for a summons to call on the plaintiff to show cause why such garnishee should not be allowed to depart from Bermuda without giving security for his appearance on the trial, or if security has been given, to show cause why the security should not be delivered up to be cancelled; which summons shall be heard and disposed of in a summary manner, and if on the hearing thereof such garnishee satisfies the judge on oath that he has no money,

goods or chattels of and is not indebted to, the defendant, or that he has paid or delivered to the officer serving the writ all such money, goods or chattels, as had been in his hands or power or owing by him, and as he was legally bound to pay or deliver, then it shall be lawful for the judge to make an order allowing the garnishee to depart from Bermuda without giving such security as aforesaid, and, if such security has been given, to order the security to be delivered up to be cancelled; and to make such order either against the plaintiff, or against the garnishee or otherwise as to costs of the application as to the judge seems just.

Garnishee may retain own debt; set-off

11 (1) Every garnishee shall be entitled to retain out of any debt owing by him to the defendant or to retain out of any money or goods of the defendant in the garnishee's hands enough to satisfy the debt to the garnishee himself; and in ascertaining how much the garnishee owes the defendant mutual debts may be set off.

(2) In any action which the defendant may bring against the garnishee after any attachment under this Act the garnishee shall be allowed for all money and goods he may have paid and delivered under any such attachment as if such money or goods had been paid or delivered to the defendant himself

(3) If any garnishee owes the defendant on any negotiable bill of exchange, promissory note or other negotiable instrument made or endorsed by the garnishee, he shall not be liable in the attachment suit to pay the amount so due until satisfactory proof has been given that the bill, note or other negotiable instrument has not been negotiated by the defendant for a valuable consideration, nor until the plaintiff indemnifies the garnishee by bond of two sufficient persons, to be approved by the plaintiff or by a judge, against all claims and demands of any assignee or endorsee of such negotiable instrument, bill or note.

When garnishee entitled to tax costs

12 If the plaintiff in any attachment suit disputes the amount of any garnishee's debt to the defendant or of the defendant's money, goods or chattels in the garnishee's hands or power, or of the defendant's debt to the garnishee, and it appears on the trial that the garnishee had on the service of the writ fully and fairly disclosed the same, and has offered to pay or deliver, or had actually paid or delivered, all that the garnishee was liable to pay or deliver, then the garnishee shall be entitled to have his costs taxed against the plaintiff and to recover them by the usual process of execution.

Default by garnishee

13 If any garnishee who has not been relieved from attending on the trial by an order made under this Act, or by the written consent of the plaintiff or his counsel, makes default in attending on the trial of the

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cause or attends and refuses to answer any question put to him by the authority of the Supreme Court, then judgment may pass against him on the demand of the plaintiff for the amount due to the plaintiff and costs; but no execution shall be issued under such judgment without leave of the Court, and the Court shall have power to vacate or set aside such judgment on such terms as it may impose on satisfactory cause shown for so doing.

Plaintiff to indemnify garnishee by giving security to Registrar

14 Before any plaintiff may sue out execution in any attachment suit in which the defendant has not duly appeared to defend the suit, the plaintiff shall give security by bond of the plaintiff to the Registrar in Form E in the Schedule, with two or more sufficient sureties to be approved by the Registrar, in double the amount for which judgment has been recovered to pay the defendant and any garnishee or garnishees any sums of money or damages and costs which they or either of them may at any time within six years recover against the plaintiff, his executors or administrators for compensation for any injury or loss sustained by them or either of them by reason of the proceedings of the plaintiff in the attachment suit, and no judgment recovered in the attachment suit shall prevent the defendant or any garnishee from recovering on any such bond compensation for any injury sustained by him.

Bonds

15 Every bond given under this Act to the Registrar shall be given to him by his official title, and shall if forfeited be assignable by the Registrar to the person aggrieved, his executors or administrators, who shall be entitled to sue thereon in his or their own name or names; but if the Registrar refuses or neglects to assign any such bond on the request of any person alleging himself to have been aggrieved or to be entitled thereto, then such person may apply to the Supreme Court or to a judge for an order requiring the Registrar to assign such bond, which order shall be heard and disposed of by the Court or judge in a summary manner.

Application for early trial

16 Any garnishee or defendant in any attachment suit shall be at liberty to apply to the Supreme Court or to a judge for an order to have the cause, or any question as to the garnishee's liability, tried in less than six months after the defendant's departure from Bermuda; and on any such application the Court or judge shall have power to grant the application, and to permit the cause, or any question as to the garnishee's liability, to be tried as soon as may be before the Supreme Court:

Provided that in any action in which the defendant does not regularly appear to defend, no execution shall be issued in less than six

months from the departure of the defendant from Bermuda, if the garnishee gives security in such form and amount as the Court may approve for payment of such amounts as may be proved to be due from him or delivery of any money or goods in his hands at the expiration of that time, but otherwise such execution may be issued immediately.

Goods of defendant in hands of wife or others

17 Any money, goods or chattels of any defendant in the hands or power of his wife, and any money, goods or chattels in the hands or power of his attorney, agent, trustee, clerk or other servant, and any debt due by any person whomsoever in Bermuda to such defendant, shall be liable to attachment under this Act.

Absent defendant

18 Any garnishee shall have power to cause an appearance to be entered for any absent defendant and to cause the suit to be defended in his name and behalf.

Rights of defendant to appeal or apply for new trial or to set aside judgment

19 Any defendant or garnishee in any attachment suit shall have the like power of appeal or to apply for a new trial or for the judgment to be set aside as any defendant in any ordinary suit.

Rights of plaintiff

20 If after service of any writ of attachment the defendant or any defendant arrives in Bermuda, it shall be lawful for the plaintiff to proceed in the action and to have judgment and execution in like manner as if the defendant had continued absent, or as near thereto as circumstances permit.

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SCHEDULE

FORMS

FORM A

ATTACHMENT BOND

BERMUDA, or)
SOMERS ISLANDS.)

KNOW all men by these presents, that we,^(a)

are jointly and severally holden and firmly bounded to the Registrar in the penal sum of ^(b) of lawful money to be paid to the Registrar or his assigns, to which payment we bind ourselves jointly and each of us severally our and every of our heirs, executors and administrators firmly by these presents sealed with our seals and dated the ^(c) one thousand nine hundred and ^(c)

WHEREAS the above bounden ^(d)

about to commence an action of attachment against ^(e)in the Supreme Court under the Attachment Act, 1874.

NOW THE CONDITION of the above obligation is such that if the above bounden ^(f) shall duly prosecute ^(g) said action without wilful or affected delay and shall pay to the defendant and garnishee or garnishees therein

^(a) Here insert names in full, addresses and description of the plaintiff or one of the plaintiffs and two sufficient sureties.

^(b) Double the amount sworn to be owing.

^(c) Insert the date.

^(d) Plaintiff's name and if there are more plaintiffs than one add all the names.

^(e) Names of defendant or defendants.

^(f) Names of the plaintiff or plaintiffs.

^(g) Their or his or as the case may be.

respectively all such costs and damages as may be awarded against ^(b) by the Supreme Court in the said action, then this obligation shall be void or otherwise it shall remain in full force.

Signed sealed and delivered)
in the presence of)

FORM B

ATTACHMENT WRIT

BERMUDA, or) [Royal style and dignity]
SOMERS ISLANDS.)

(Seal of the Supreme Court)

TO Our Provost Marshal General of Bermuda or his lawful deputy [*or to one of Our Coroners of Bermuda*] — Greeting —

Attach the money, goods and chattels of, and debts due to [blank] in the hands of or owing by [blank] or any or either of them at the suit [blank] against the said [blank] and return this with what you have done under the same to Our judge of Our Supreme Court on the last Monday in [blank] next.

WITNESS, the Honourable [*the name of the Chief Justice*] — Justice of Our Supreme Court the [blank] day of [blank] one thousand nine hundred and [blank] and of Our reign [blank]

Registrar

FORM C

FORM OF INTERROGATION

INTERROGATORIES to be administered to the garnishees on whom the writ of attachment at the suit of [blank] against [blank] shall be served.

1 Had you at the time of service or have you now any, and if any what, money, goods or chattels of the above named defendant [*or defendants or either of them*] in your hands, possession or power?

^(b) Them or him or as the case may be.

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2 Do you owe anything to the said defendant [*or defendants or either of them*] and if you do how much do you owe?

3 Have you within six months next before the service of the writ in this suit had any, and if any what, money, goods or chattels of the said defendant [*or defendants or either of them*] in your hands, possession or power; and if so how, when, and to whom and by whose directions, have you disposed thereof?

4 Have you within six months next before the service of the writ in this suit been indebted to the defendant [*or defendants or either of them*] and if so to what amount; and how, when, and to whom and by whose directions have you paid or otherwise satisfied or transferred such debt?

5 Have you at any time delivered or disposed of any money, goods or chattels, or paid, satisfied, reduced or transferred any debt for the purpose of preventing the same from being attached in any suit or suits against the defendant [*or defendants or either of them*]? and if so, state particularly what you have so paid, delivered, transferred or otherwise disposed of and to whom, and when, and by whose direction or request.

FORM D

BOND FOR GARNISHEE'S PERSONAL APPEARANCE ON THE TRIAL.

BERMUDA, or)
SOMERS ISLANDS.)

KNOW all men by these presents, that we, ^(a)

are jointly and severally holden and firmly bounden to the Registrar of the Supreme Court of the said Islands in the penal sum of [*blank*] of lawful money to be paid to the Registrar or his assigns, to which payment we bind ourselves jointly and severally our and every of our heirs, executors and administrators firmly by these present sealed with our seals, and dated the [*blank*] day of [*blank*] one thousand nine hundred and

WHEREAS the above bounden ^(b) has been served with a writ of attachment in the suit of [*blank*] against [*blank*] in the Supreme Court, and has been required to give bond under section 4 of the Attachment Act, 1874, for his personal appearance on the trial of the cause:

^(a) Names of garnishee and two sufficient sureties in full with addresses and descriptions.

^(b) Name of garnishee.

NOW THE CONDITION of the above obligation is such that if the above bounden ^(c) personally appears on the trial of the said action in the Supreme Court there to answer such further questions as may be put to him touching the matters in question in the said cause and otherwise to do and receive as the Supreme Court may order and does not depart thence without leave of the Court, then this obligation shall be void or otherwise it shall remain in full force.

Signed sealed and delivered)
in the presence of)

FORM E

BOND IN ATTACHMENT SUIT PRIOR TO ISSUE OF EXECUTION

BERMUDA, or)
SOMERS ISLANDS.)

KNOW all men by these presents, that we, ^(a)

are jointly and severally holden and firmly bounden unto the Registrar in the penal sum of ^(b) of lawful money to be paid to the Registrar or his assigns to which payment we bind ourselves jointly and severally; our and every of our heirs, executors and administrators firmly by these presents, sealed with our seal and dated the [blank] day of [blank] one thousand nine hundred and [blank]

WHEREAS the bounden ^(c) recovered judgment against ^(d) in the Supreme Court for ^(e) and ^(f) for costs of suit taxed in the cause and is desirous of taking out execution therein for the amount recovered against money, goods, chattels and debts attached in the hands of ^(g)

NOW THE CONDITION of the above obligation is such that if the plaintiff or plaintiffs in the said attachment suit or either of them, their or either of their heirs, executors or administrators, pay to the defendant and garnishees respectively in the said suit, all sums of money, damages and costs which they or any or either of them shall within six years from the

^(c) Name of garnishee.

^(a) Names in full of plaintiff or one of the plaintiffs and two or more sufficient sureties, with their addresses and descriptions.

^(b) Double the amount of the judgment recovered including costs.

^(c) Names of plaintiff or of all the plaintiffs.

^(d) The defendant or defendants.

^(e) Amount recovered.

^(f) Amount of taxed costs payable by defendant or defendants.

^(g) Names of garnishees in whose hands property or debt has been attached.

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date thereof, recover against the plaintiff or plaintiffs in the said attachment suit by reason of his or their proceedings therein, then this obligation shall be void or otherwise it shall remain in force.

Signed sealed and delivered)
in the presence of)

[*Amended by*

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1951 : 58

1952 : 11]