

Summons be first made out upon which Writt or Summons if the p^{ty} Def^t be an Inhabitant or Resedent within this Province and the Sherriffe return a non est Inventus one other Writt or Summons Shall thereupon in manner afore Said issue forth against the Said Def^t and if the Sherriffe Shall on the Second Writt or Summons return a non est Inventus likewise an Attachm^t Shall and may thereupon in manner hereafter Sett downe be awarded and in case any Writt or Summons Shall issue forth of any of the Courts here against any person or persons absent out of this Province in Such Case Upon the Return of a Non est Inventus by the Sherriffe on Such Writt or Summons and the p^{ty} plant^{ff} his leaving with the Attorney of Such absent Defendant (if he hath left an Attorney a Copy of his Declaration or Short Note expressing the true Cause of Action or if he hath left no Attorney then the p^{ty}: leaving a Cobby of the Said declaration or Short note expressing the true Cause of Action at the house where the Defend^t absent did last reside or dwell and making Such Proove of his Action as the Said respective Courts Shall think fitt it Shall and may be lawfull for the Justices of the Said Courts to Award an Attachm^t etc: So that the leaving the declaration or true Cause of Action with the Defend^{ts} Attorney at his house that thereby he may have Notice of Such Suit against him and [26] may if he think convenient Defend himself to the Action afore Said and that he may not contrary to Law be disseized of his goods and Chattels or deprived of the benefitt of the Law but by the due Course and process of the Law is in this Case absolutely proved to be done and in this So Materiall a matter and So possitive a Rule (without the direct observance whereof it is by necessary consequence implied that the Justices of the Said Courts cannot Award an Attachment against any person absent out of the Country The Said Plantiffe hath failed in his Duty and therefore the Attachment afo^{sd} Erroniously issued and the Judgm^t Condemnation and Execution thereupon illegall and against Law.

2: Another essentiall part the plant^{ff} hath Failed in, before the Courts afores^d can award an Attachm^t as afore Said which is due proove of the Action etc. it doth not appear by the Transcript of the Record afore Said that the plant^t hath made any proove at all of the debt Sued for which he ought to have done by the express words of the Act afore Said, and therefore without that proove the Said Court had no power by the Said Act (which being a New Law and directly in face of the Law of England though convenient for this Province the Justices ought precisely to Follow) to Award an Attachm^t against the Sd Def^t his goods or Chattels etc: And therefore the Said Attachm^t Judgm^t Condemnation and Execution Void illegall and Erronious in Law.

3: The Judgm^t is only for an Attachm^t to issue for 13281^{lb} of Tobacco and Costs of Suit, and there is noe Costs taxed and the Attachm^t is for 15534^{lb} of Tobacco which is 2253^{lb} of Tobacco more then the Judgm^t and So much the Sheriffe hath Attached and is Condemned which Attachm^t for that Summ