PEARCE *vs.* BALDRIDGE.

Non-residence of the plaintiff must be pleaded in abatement; it is not a matter in bar, nor can it be taken advantage of on error.

The want of a bond for costs is only a matter in abatement.

Where the officer in his return to a writ of attachment gives a specific description of the property attached, a schedule reiterating the same facts is unnecessary.

Writ of Error to the Circuit Court of Lawrence County.

DEBT by attachment determined in August 1844, by Johnson, C. J. then a circuit judge. No personal service was ever had upon the defendant, there was an affidavit that he was non-resident filed with the declaration. The declaration, attachment bond, affidavit for attachment, and a bond for costs reciting that the plaintiff was non-resident, were all filed on the same day. The only service ever had upon the defendant was by publication in a newspaper. Judgment by default was taken; and a writ or error afterwards sued to reverse it. The state of case not shown above, sufficiently appears in the opinion of the court.

BYERS & PATTERSON, for plaintiff. The statute regulating proceedings by attachment, is in derogation of the common law and must be construed strictly. *Desha vs. Baker et al.* 3 *Ark. R.* 519.

Where there is no personal service, and where the proceeding is purely against the thing, every requisite of the statute in relation to the obtaining of the writ, and the attaching the thing, must be complied with to give the court jurisdiction. If there is a failure to comply with any one of the requirements of the statute, the court has no jurisdiction of the thing, and having no jurisdiction of the person, cannot give judgment. *Story on Conf. of Laws* 461, 463. 2 *Ed.* 3 *Ark. R.* 319. 4 *Ark. R.* 197, 199.

In this case the sheriff did not return with the writ a schedule of the property attempted to be attached as required by the statute. Hence all subsequent proceedings in the case are irregular. ***Desha vs. Baker et al.,* 3 *Ark. R.* 320.**

To authorize a verdict by default there must be either a good personal service or a service legally binding upon his property. 4 *Ark. R.* 199. In this case there was no personal service, and we contend the requirements of the statute have not been complied with in attaching the property. *ib.* 5 *Ark. R.* 422, *Gibson et al. vs. Wilson.* This case shows clearly that, upon principle, if the requisites of the statute have not been complied with in serving the attachment, the court has no jurisdiction. It is a proper service alone that gives jurisdiction to proceed against the thing.

In our opinion the bond filed in this case for the attachment is defective and insufficient. The statute requires that "the creditor shall likewise, at the time of filing his declaration or statement of his claim, file with such clerk a bond to the defendant with sufficient security," &c. The creditor did not give bond at all neither does it appear that any other person did for him. The names of those in the bond filed in the case, have no connection with the creditor in any way. The bond is a condition precedent to the obtaining the writ of attachment. If the bond is defective the plaintiff ought not to have advantage of his suit. *Delano vs. Kennedy*, 5 *Ark. R.* 457. It may be contended that a defect in the bond cannot be taken advantage of except by plea in abatement. We answer that a good bond is necessary to give the court jurisdiction of the thing. Without it the writ did not properly issue.

We also present to the court the question whether a non-resident plaintiff can maintain a proceeding by attachment by our statute. The record shows the plaintiff to be a non-resident.

The bond is defective in this also, that it does not give the residences of the obligors, and for ought we know they are fictitious persons.

There is no evidence that publication was ever made according to law. The publication filed is wholly varient from the cause of action set out in the declaration. The bond for obtaining the execution is also defective.

JOHNSON, C. J. did not sit in this case.

OLDHAM, J. It is assigned for error that the declaration is insufficient. In what particular it is defective is not shown. Upon inspection, we find it technically formal and substantially good in every particular.

The truth of the second assignment does not appear of record. The fact that the plaintiff is a non-resident appears alone from the bond for costs, which is copied into but forms no part of the record of the cause. *Montgomery vs. Carpenter,* 5 *Ark. R.* 264. If the fact of non-residence would avail any thing, being to the disability of the person of the plaintiff, it should be pleaded in abatement, but cannot be taken advantage of by plea in bar, or in error. But its insufficiency at any stage of the proceedings was decided in *Jones vs. Buzzard,* 2 *Ark. Rep.* 415, upon a statute no broader than our present attachment law.

The third assignment is of matter in abatement only. *Didier vs. Galloway,* 3 *Ark. R.* 501.

The only remaining cause assigned for error is, that the sheriff made and returned no schedule of the property attached. The return is strictly in accordance with the law, and contains a specific description of the land attached. A schedule is necessary where the property consists of numerous articles; in which case the officer is authorized to give a general description of the property attached in his return accompanying the same with a schedule containing a specific inventory of the articles so attached. But where the sheriff gives a specific description and statement of the property attached in his return, a schedule reiterating the same facts is wholly useless and unnecessary. We see no error in the judgment and therefore the same is affirmed.