

Case No. 3,926.

DIX v. NICHOLLS.

[2 Cranch, C. C. 581.]<sup>1</sup>

Circuit Court, District of Columbia.

May Term, 1825.

ATTACHMENT—AMOUNT OF DEBT.

An attachment under the act of Maryland, 1795, c. 56, will not lie for a debt under the value of twenty dollars. The proceeding must be according to the directions of the act of Maryland, 1791, c. 68, § 1.

This was an attachment issued by the clerk of this court upon a warrant of a justice of the peace directed to the clerk, under the act of Maryland, 1795, c. 56, upon a debt of \$8.87.

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Mr. Morfit, for plaintiff [John Dix], moved for judgment against the garnishee upon his default of appearance.

Mr. Wallach, as amicus curiae, suggested that the case, being for a debt under 820, was not within the jurisdiction of this court, unless the plaintiff should proceed according to the directions of the Maryland act of 1791, c. 68, § 1, by which it is provided that “if the justice’s warrant shall be returned non est inventus, the creditor may proceed in the respective county courts, for obtaining an attachment according to the directions of the act for issuing out attachments in this province, and limiting the extent of them,” (1715, c. 40,) “against the goods, chattels, and credits of such person for any sum exceeding ten shillings, or fifty lbs of tobacco.”

Mr. Morfit, in reply, insisted that his remedy was strictly within the letter of the act of 1795, which makes no exception of cases under 820. That although a warrant from the justice against the defendant [Hezekiah Nicholls] had been returned non est, it did not prevent the plaintiff from proceeding under the act of 1795. That the return of non est gave this court jurisdiction of the case; and the act of 1795 is only a supplement to that of 1715, c. 40.

THE COURT (THRUSTON, Circuit Judge, absent) was of opinion that this court could not take jurisdiction of this case in any other way than that which is pointed out by the act of 1791, c. 68. The act of 1795, does not purport to give the court jurisdiction in cases of less value than £100, and we think it did not intend to give it That act must, as we think, be restricted to cases not before excluded from the jurisdiction of the county courts by the smallness of their value. The justice of the peace, therefore, in this case, had no right to command the clerk of this court to issue this attachment nor was the clerk bound to issue it upon his command. The attachment, not being legally issued, cannot give this court jurisdiction. The creditor ought to have proceeded according to the act of 1715, and not according to the act of 1795.

<sup>1</sup> [Reported by Hon. William Cranch, Chief Judge.]