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# PLEADING AND PRACTICE

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COMMON LAW

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MARTIN P. BURKS, LL. B., LL. D.

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C. H. MORRISSETT, LL. B.

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**§ 329. Execution must follow judgment.**

There are various forms of executions, but that to which attention is now specially directed is the writ of *feri facias*, which is the ordinary judicial process for enforcing the collection of a money judgment by the sale of the property of the defendant. The writ is addressed to the sheriff of the county or sergeant of the city, and directs him of the goods and chattels of the defendant "you cause to be made" (*feri facias*) the amount of the judgment. As its purpose is to enforce the collection of a money judgment, it must follow the judgment as to the amount, time from which it bears interest, names of parties, and in every other material aspect, and any variance between the judgment and the execution is good ground to quash the execution.<sup>1</sup> If the judgment be a joint judgment against several, the execution must be joint also, though some of the parties be dead;<sup>2</sup> but if the action be against several jointly bound, and the judgment be rendered against several defendants at different dates, there may be one joint execution.<sup>3</sup>

**§ 330. Issuance of executions.**

The method of obtaining an execution is generally regulated by statute. In Virginia it is made the duty of the clerk *ex officio* to issue the writ as soon as practicable after the adjournment of the court, and place it in the hands of the proper officer for execution, unless otherwise directed, by a writing, by the beneficiary, his agent or attorney.<sup>4</sup> If the judgment and the claim on which it was based has been assigned, the assignor has no control over an execution issued by direction of the assignee.<sup>5</sup> Usually, an execution can only issue on a *final* judgment, but it is provided by statute in Virginia that any court, after the fifteenth day of its term, may make a general order allowing executions to issue

1. *Snively v. Harkrader*, 30 Gratt. 487; *Taney v. Woodmansee*, 23 W. Va. 709.

2. *Holt v. Lynch*, 18 W. Va. 567.

3. *Walker v. Com.*, 18 Gratt. 13.

4. Code, § 6480.

5. *Clark v. Hogeman*, 13 W. Va. 718.