

# PLEADING AND PRACTICE

In Actions at c#  
*e*  
COMMON LAW

BY  
*1, 2, 3*  
MARTIN P. BURKS, LL. B., LL. D.

*SECOND EDITION*

BY  
C. H. MORRISSETT, LL. B.

PUBLISHED AND FOR SALE BY  
**SURBER-ARUNDAINE COMPANY**  
INCORPORATED  
PUBLISHERS-PRINTERS-STATIONERS  
CHARLOTTESVILLE-VIRGINIA

*6 11/21/22*

*S  
US  
VIR*

### § 342. Territorial extent of lien.

"The general rule as to the territorial extent of the lien of an execution is that it is coextensive with the jurisdiction of the officer to whom the writ is delivered, and attaches to all the defendant's goods and chattels within such territory, and as the writ is in most cases delivered to the sheriff or some other officer whose jurisdiction has the same limits, its lien usually extends throughout the county in which it is issued. In some states, however, the rule that the lien of an execution extends to the defendant's property throughout the state is established."<sup>15</sup>

In Virginia it is provided by statute that, as to *tangible property*, the lien shall be restricted to the bailiwick of the officer into whose hands the execution is placed to be executed, but that, as to *intangible property*, the lien shall extend throughout the limits of the Commonwealth.<sup>16</sup>

15. 11 Am. & Eng. Encl. Law (2nd Ed.) 677.

16. Code, § 6517. This statute (new with the Code of 1919) is, as stated by the revisors, simply declaratory of pre-existing law.

The lien on tangible property must be perfected, if at all, by a levy of the *fi. fa.* on or before the return day thereof, and as the officer charged with the collection has no power to make such levy outside of his bailiwick, it would seem that, as to tangible personal property, independently of § 6517, the lien of a *fi. fa.* should be restricted to the jurisdiction of the officer charged with its collection. There might be a *fi. fa.* in the hands of every sheriff in the Commonwealth, and it would probably reach each one at a different time, and the date of the lien would consequently vary in each county according to the time at which the *fi. fa.* was received by the sheriff of that county. If issued in one county and placed in the hands of the sheriff of that county, it would be a lien in that county from the time it was received by the sheriff of that county; and even if the same *fi. fa.* is sent to a second county, the lien, as to property in the second county, dates only from the time that the *fi. fa.* is received by the sheriff of that county. In any case the lien is only an inchoate, imperfect lien, and can only be perfected by a levy by an officer who has power to make such a levy on or before the return day of the writ.

As to choses in action, the same rule does not apply. Here the lien is not a levy lien at all, but is created by merely placing a *fi. fa.* in the hands of an officer to be executed, and the common practice has been to issue a *fi. fa.* in the county in which the judgment was obtained, and to send a summons to any county in which the garnishee resides. It has never been thought necessary to send a writ of *feri facias* to the county in which

### § 343. Duration of lien.

*Tangible Property.*—As to *tangible* property, the lien continues only till the *return day* of the writ, if not levied on, on or before that day; but if so levied, it continues thereafter till sale, even though the defendant dies after levy but before the sale, provided the sale be not postponed so long as to manifest an intention to abandon the levy. If the levy be abandoned, the lien is gone, and the property becomes liable as before to levy for any other *fi. fa.*<sup>16a</sup>

*Intangible Property.*—As to *intangible* property, or any property which, from its nature, is not capable of being levied on, the lien continues during the life of the judgment, that is, for ten years from the return day of the *fi. fa.* upon which there has been no return, or twenty years from the return day of any *fi. fa.* upon which there has been a return, and there may be successive executions during these periods so as to make the lien perpetual.<sup>17</sup> Thus if a *fi. fa.* issued returnable to First January Rules, 1920 (say January 5, 1920) and there was a return on it, the lien created by the *fi. fa.* would extend to January 5, 1940, and if before that day another *fi. fa.* was issued, it would extend the lien of the first *fi. fa.* ten years from the return day of the latter *fi. fa.* if there was no return thereon or twenty years if there was a return and so on indefinitely. The lien, though not enforced in the debtor's lifetime, continues after his death.<sup>18</sup> The lien continues after the return day of the execution and has priority over a subsequent execution lien under the same law, even though there has been a proceeding by a suggestion under the junior sooner than under the senior

the garnishee resides. The lien extends throughout the limits of the state. The statute creating the lien places no limit upon its territorial extent, and there is nothing inherent in the nature of the property upon which the *fi. fa.* is a lien, or in the methods of enforcing the *fi. fa.* which necessitates any such restriction.

16a. *Rhea v. Preston*, 75 Va. 757.

17. Report of Revisors 1849, p. 920; 5 Va. Law Reg. 673; *Ackiss v. Satchell*, 104 Va. 700, 52 S. E. 378.

18. *Trevillian v. Guerrant*, 31 Gratt. 525; *Brown v. Campbell*, 33 Gratt. 402.