Chapter 18

1959 REPLACEMENT PART

Judgments and Decrees

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ENTRY OF JUDGMENTS AND DECREES, GENERALLY

18.010 Judgment, decree and order defined. (1) A judgment is the final determination of the rights of the parties in an action or special proceeding.

(2) The final determination of the rights of the parties to a suit is called a decree, and any intermediate determination is called an order.

18.020 Application to suits. ORS 18.030, 18.050, subsection (3) of 18.060, 18.070 to 18.100, 18.120 and 18.130 shall apply to suits and the decrees therein.

18.030 Form of entry of judgment, generally; duties and powers of clerk. All judgments shall be entered by the clerk in the journal, and shall specify clearly the amount to be recovered, the relief granted, or other determination of the action. In the entry of all judgments, except judgments by default for want of an answer, the clerk shall be subject to the direction of the court.

18.040 Time of entry of judgment; conformity to findings or verdict. When judgment is given in any of the cases mentioned in ORS 18.070 or 18.090, it shall be entered within the day it is given. When a trial has been had before the court without a jury, judgment shall be entered by the clerk in conformity with the findings within the day the findings are filed. If the trial is by jury, judgment shall be given by the court in conformity with the verdict and so entered by the clerk within the day on which the verdict is returned.

18.050 Entry of judgment after time prescribed. When the clerk is unable or omits to enter judgment within the time prescribed in this chapter, it may be entered at any time thereafter. [Amended by 1959 c.638 §6]

18.060 Vacation, judgment or decree in; written decision; form and time of entry. (1) When a motion for new trial, for a particular judgment, or for a judgment notwithstanding the verdict, is decided in vacation, the decision shall be in writing, and filed with the clerk. Within the day of such filing, judgment shall be entered by the clerk in conformity with the decision.

(2) When upon the submission of a suit the court is undecided as to what decree ought to be given therein, it may reserve the case for further consideration, and may decide the same and give such decree in vacation by filing it with the clerk. When a decree is given, unless otherwise ordered by the court, it shall be entered by the clerk within the day it is given.

(3) If a judgment or decree is entered in vacation, the clerk shall entitle and date the entry substantially as follows:

"State of Oregon, County of_____.
_____ Court for the County of _____. In vacation, after the _____ term, 19___. _____ the _____, 19___," as the fact may be, and such entry shall have the same effect as if entered in term time.

18.070 Judgment on confession, on referee's report, or on controversy submitted without action; form of. When judgment is given on confession, with or without action, on the report of referees, or on a controversy submitted without action, the entry shall state substantially the confession and assent thereto, the report of the referees, or agreed case, as the case may be.

18.080 Default judgment. (1) Judgment may be had upon failure to answer, as prescribed in this section. When it appears that the defendant, or one or more of several defendants in the cases mentioned in ORS 15.100, has been duly served with the summons, and has failed to file an answer with the clerk of the court within the time specified in the summons, or such further time as may have been granted by the court or judge thereof, the plaintiff shall be entitled to have judgment against such defendant or defendants, as follows:

(a) In an action arising upon contract for the recovery of money or damages only, the clerk, upon the written application of the plaintiff filed with the clerk, shall enter the default of the defendant, and immediately thereafter enter judgment for the amount specified in the summons, against the defendant, or against one or more of several defendants in cases provided for in ORS 15.100.

(b) In other actions, the clerk, upon written motion of the plaintiff being filed, shall enter the default of the defendant, and thereafter the plaintiff may apply to the court for the relief demanded in the complaint. The court shall, upon such application, give judgment for the amount claimed in the summons, or the relief demanded in the complaint, unless it is necessary, to enable the court to give judgment or carry the

same into effect, to take proof of any matter of fact, in which case the court may order the entry of judgment to be delayed until such proof is taken. The court may hear the proof itself, or make an order of reference, or that a jury be called to inquire thereof. Thereupon the court shall enter judgment in accordance with its own findings, or the verdict of the jury; provided, however, that in all cases where the cause of action is for unliquidated damages, if a jury is demanded by either party to assess the damage, the court must grant such jury trial. If neither party demands a jury the damage may be assessed by the court.

(2) When the defendant has answered, and admits the plaintiff's claim, but sets up a counter-claim amounting to less than the plaintiff's claim, the plaintiff, on motion, shall have judgment for the excess of his claim over such counter-claim, as for want of answer thereto.

(3) When in any action the service of the summons appears to have been made by publication, the court may order the entry of judgment to be delayed until the plaintiff files with the clerk an undertaking, with one or more sureties, to be approved by the clerk, in an amount equal to the sum for which judgment may be given, upon the condition that the plaintiff will abide by and perform any order of the court requiring restitution to be made to the defendant or his representative in case either of them shall afterwards be admitted to defend the action. The sureties in the undertaking shall have the qualifications of bail, and justify before the clerk as provided in ORS 29.610.

(4) When judgment is given for want of answer, the entry shall state substantially that the defendant was duly served with the summons, and failed to answer the complaint.

18.090 Judgment on demurrer. When a decision has been made sustaining or overruling a demurrer, unless the party against whom the decision is made is allowed to amend or plead over, judgment shall be given for the prevailing party, for such amount, or relief, or to such effect, as it appears from the pleadings he is entitled; but, if the cause is otherwise at issue upon a question of fact, the court may order the entry of judgment to be delayed until such issue is tried or otherwise disposed of.

18.100 Judgment for defendant on counter-claim or otherwise. If a counter-claim established at the trial exceeds the plaintiff's demand so established, judgment for the defendant shall be given for the excess; or if it appears that the defendant is entitled to any other affirmative relief, judgment shall be given accordingly.

18.110 Judgment in action for recovery of personal property. In an action to recover the possession of personal property, judgment for the plaintiff may be for the possession, or the value thereof, in case a delivery cannot be had, and damages for the detention thereof. If the property has been delivered to the plaintiff, and the defendant claims a return thereof, judgment for the defendant may be for a return of the property, or the value thereof, in case a return cannot be had, and damages for taking and withholding the same.

18.120 Judgment for or against any of several parties. Judgment may be given for or against one or more of several plaintiffs, and for or against one or more of several defendants; and it may, when the justice of the case requires it, determine the ultimate rights of the parties on each side as between themselves.

18.130 Judgment against one or more defendants. In an action against several defendants, the court may, in its discretion, render judgment against one or more of them, whenever a several judgment is proper, leaving the action to proceed against the others.

18.140 Judgment notwithstanding verdict; alternative motion for new trial. (1) When it appears from the pleadings that the court has not jurisdiction of the subject of the action or the person of the defendant, or that the facts stated in the pleadings of the plaintiff or defendant, as the case may be, do not constitute a cause of action or defense thereto, or when a motion for a directed verdict which should have been granted has been refused and a verdict is rendered against the applicant, the court may, on motion, render a judgment notwithstanding the verdict, or set aside any judgment which may have been entered and render another judgment, as the case may require.

(2) In any case where, in the opinion of the court, a motion for a directed verdict ought to be granted, it may nevertheless, at the request of the adverse party, submit the case to the jury with leave to the moving

party to move for judgment in his favor if the verdict is otherwise than as would have been directed.

(3) A motion in the alternative for a new trial may be joined with a motion for judgment notwithstanding the verdict, and unless so joined shall, in the event that a motion for judgment notwithstanding the verdict is filed, be deemed waived. When both motions are filed, the motion for judgment notwithstanding the verdict shall have precedence over the motion for a new trial, and if granted the court shall, nevertheless, rule on the motion for a new trial and assign such reasons therefor as would apply had the motion for judgment notwithstanding the verdict been denied, and shall make and file an order in accordance with said ruling.

(4) Any motion or motions provided for in this section, together with the supporting affidavits and counter-affidavits, if any, shall be filed, heard and determined as provided in ORS 17.615. [Amended by 1957 c.348 §1]

18.150 [Reserved for expansion]

RELIEF FROM JUDGMENT, DECREE, ETC.

18.160 Relief from judgment, decree, order or other proceeding. The court may, in its discretion, and upon such terms as may be just, at any time within one year after notice thereof, relieve a party from a judgment, decree, order or other proceeding taken against him through his mistake, inadvertence, surprise or excusable neglect.

18.170 to 18.200 [Reserved for expansion]

DISMISSAL OR NONSUIT

18.210 Decree of dismissal before trial. A decree dismissing a suit may be given against the plaintiff in any of the cases specified in subsections (1), (2) and (3) of ORS 18.230, except the last clause of such subsection (3). Such decree is a determination of the suit, but shall not have the effect to bar another suit for the same cause, or any part thereof.

18.220 Decree of dismissal after trial. Whenever upon the trial of a suit it is determined that the plaintiff is not entitled to the relief claimed or any part thereof, a decree shall be given dismissing the suit, and such decree shall have the effect to bar another suit for the same cause or any part thereof, unless such determination is on account of a failure of proof on the part of the plaintiff, in which case the court may, on motion of the plaintiff, give such decree without prejudice to another suit by the plaintiff for the same cause or any part thereof.

18.230 When judgment of nonsuit given. A judgment of nonsuit may be given against the plaintiff:

(1) On motion of the plaintiff, at any time before the issues have been joined and the trial of the facts has commenced, unless a counterclaim has been pleaded as a defense; but if the issues have been joined and the trial of the facts has commenced the allowance of the motion shall be subject to the discretion of the court.

(2) On motion of either party, upon the written consent of the other filed with the clerk.

(3) On motion of the defendant, when the action is called for trial, and the plaintiff fails to appear, or when after the trial has begun, and before the final submission of the cause, the plaintiff abandons it, or when upon the trial the plaintiff fails to prove a cause sufficient to be submitted to the jury.

18.240 Cause not sufficient to be submitted to jury, defined. A cause not sufficient to be submitted to the jury is one which, if the jury were to find a verdict for the plaintiff, upon any or all of the issues to be tried, the court ought, if required, to set aside for want of evidence to support it.

18.250 Effect of judgment of nonsuit. When a judgment of nonsuit is given, the action is dismissed; but such judgment shall not have the effect to bar another action for the same cause.

18.260 Dismissal for want of prosecution; notice. Not less than 60 days prior to the first regular motion day in each calendar year, the clerk of the court shall mail notice to the attorneys of record in each pending case in which no action has been taken for one year immediately prior to the mailing of such notice, that each such case will be dismissed by the court for want of prosecution, unless on or before such first regular motion day application, either oral or written, is made to the court and good cause shown why it should be continued as a pending case. If such application is not made or good cause shown, the court shall dismiss each such case. Nothing contained in this section shall prevent the dismissing at any

time, for want of prosecution, of any suit, action or proceeding upon motion of any party thereto.

18.270 to 18.300 [Reserved for expansion]

DOCKETING; RECORD; LIEN; SATISFACTION

18.310 Application to suits. ORS 18.320 to 18.370 and 18.400 shall apply to decrees and the final record or roll thereof, and ORS 18.430 shall apply to the enforcement of decrees, so far as the nature of the decree may require or admit of it.

18.320 Docketing of judgment or transcript. Immediately after the entry of judgment in any action the clerk shall docket the same in the judgment docket. At any time thereafter, so long as the original judgment remains in force under ORS 18.360, and is unsatisfied in whole or in part, the plaintiff, or in case of his death, his representative, may file a certified transcript of the original docket in the office of the county clerk of any county in this state. Upon the filing of such transcript the clerk shall docket the same in the judgment docket of his office. A certified transcript of the new docket entry of a judgment renewed under ORS 18.360 may likewise be filed in another county.

18.330 [Repealed by 1959 c.558 §29 (ORS 18.335 enacted in lieu of ORS 18.330)]

Note: The repeal of ORS 18.330 takes effect on January 1, 1960. Until January 1, 1960, ORS 18.330 as compiled in the 1957 Replacement Part (replaced in 1959) will remain in effect. See section 45, chapter 558, Oregon Laws 1959, for appeals where the notice of appeal is filed prior to January 1, 1960.

18.335 Trial court file. In every proceeding, the clerk shall attach together and file in his office, in the order of their filing, all the original papers filed in the court, whether before or after judgment, including but not limited to the summons and proof of service, pleadings, demurrers, motions, affidavits, depositions, stipulations, orders, the judgment and the notice of appeal and the undertaking on appeal, if any. [1959 c.558 §30 (enacted in lieu of ORS 18.330)]

Note: ORS 18.335 first becomes effective on January 1, 1960. See section 45, chapter 558, Oregon Laws 1959, for appeals where notice of appeal is filed prior to January 1, 1960.

18.340 [Repealed by 1959 c.558 §51]

Note: The repeal of ORS 18.340 takes effect on January 1, 1960. Until January 1, 1960, ORS 18.340 as compiled in the 1957 Replacement Part (replaced in 1959) will remain in effect.

18.350 Lien of judgment; supersedeas. (1) From the date of docketing an original or renewed judgment or the transcript thereof, as provided in ORS 18.320, such judgment shall be a lien upon all the real property of the defendant within the county or counties where the same is docketed, or which he may afterwards acquire therein, during the time prescribed in ORS 18.360.

(2) When an appeal is taken from any judgment and an undertaking on appeal is filed, with a surety corporation licensed to do business in Oregon as surety on such undertaking, to the effect that if the judgment or any part thereof shall be affirmed the appellant will satisfy it so far as affirmed, the lien of the judgment shall cease and be annulled upon the expiration of the time allowed to except to the surety in the undertaking or upon the justification thereof, if excepted to, and that fact shall be noted upon the judgment lien docket over the signature of the officer having custody of such docket.

(3) When the lien of a judgment ceases in the county in which the judgment was originally entered, it shall cease in every county in which a transcript thereof has been filed.

18.360 Period during which judgment remains valid, and a lien; renewal. Whenever, after the entry of a judgment, a period of 10 years shall elapse, the judgment and the lien thereof shall expire. However, before the expiration of 10 years the circuit court in which such judgment was docketed, on motion, may renew such judgment and cause a new entry of the same to be made in the judgment docket, after which entry the lien of the judgment shall continue for another 10 years unless sooner satisfied, and after which entry execution may issue upon such judgment for another 10 years.

18.370 Priority of lien over unrecorded conveyance. A conveyance of real property, or any portion thereof, or interest therein, shall be void as against the lien of a judgment, unless such conveyance be recorded at the time of docketing such judgment, or the transcript thereof, as the case may be.

18.380 Liens of judgments or decrees of federal district courts. Any judgment or decree rendered by a district court of the United States, within the State of Oregon, shall be a lien on property throughout the state, in the same manner, to the same extent and

under the same conditions as if the judgment or decree had been rendered by a court of general jurisdiction of this state, upon a compliance with the requirements of ORS 18.390, and not otherwise.

18.390 Docketing of transcript of federal court judgment or decree; date of lien. Any judgment or decree rendered by a district court of the United States may be docketed by the clerk of the court which renders it, in like manner and with the same effect as judgments or decrees rendered by a court of general jurisdiction in this state are docketed. At any time after the entry and docketing of such judgment or decree in the judgment docket of the court, so long as the original judgment remains in force under ORS 18.360, and is unsatisfied in whole or in part, the plaintiff, or in case of his death, his representative, may file a certified transcript of the original docket in the office of the county clerk or other custodian of the records of any county in this state. A certified transcript of the new docket entry of a judgment renewed as provided in ORS 18.360 may likewise be filed in any county. Upon the filing of such transcript, the clerk, or other custodian of the records, shall docket the same in a judgment docket of his office. From the date of docketing the transcript, the judgment or decree shall be a lien upon all the real property of the defendant within the county where the same is docketed, or which he may afterwards acquire therein, during the time prescribed in ORS 18.360.

18.400 Satisfaction or assignment of judgment, record of. (1) When any judgment is paid or satisfied, that fact may be noted upon the judgment docket of original entry over the signature of the officer having the official custody of such docket, or of the party entitled to receive and receiving payment or satisfaction, or of the attorney or attorneys representing the judgment creditor in the suit, action or proceeding in which the judgment was rendered; provided, such satisfaction shall not be made by an attorney whose authority over the judgment has expired. Upon annulment or payment or satisfaction and entry thereof being so made, the officer having the official custody of the judgment docket of original entry shall, upon request of any person and payment of a fee of 25 cents for the benefit of the county, issue a certificate showing the fact of satisfaction of such judgment, or annulment of the lien thereof, describing the same sufficiently for identification; and such certificate shall, upon presentation to the officer having official custody of the judgment docket in any county in which a transcript of such judgment may have been docketed, be entered upon such docket for the purpose of making the satisfaction of judgment a matter of record in such county.

(2) Evidence of the satisfaction of any judgment may also be perpetuated by the execution and acknowledgment by the judgment creditor, his assignee or personal representative, of a certificate describing the judgment with convenient certainty, and specifying that the judgment has been paid or otherwise satisfied or discharged. Such certificate shall be acknowledged or proved and certified in the manner provided by law for conveyances of real property, and may be recorded in the record of deeds of any county or counties, upon payment of the same fees as for recording a deed. In case such judgment has been entered in the judgment lien docket of any such county the official custodian of such lien docket shall, upon presentation and recording of such certificate of annulment or satisfaction, make notation of the recording thereof, with reference to the book and page of the record.

(3) An assignment of any judgment, executed in like manner, shall be entitled to record in the deed records of any county, and upon recording the same fact thereof, with like reference to book and page, shall be noted opposite the judgment on the judgment lien docket of such county. In counties where the deed records and the judgment lien docket are in the custody of different officers, the officer recording a certificate of satisfaction or assignment in the deed record shall exhibit the same to the officer having the custody of the judgment lien docket, who shall thereupon make proper entry upon said docket, opposite the entry of such judgment, showing the book and page where assignment or satisfaction of the judgment is recorded.

18.410 Who may satisfy judgment for payment of money; proceedings where judgment docketed in another county; disposition of money. Any person, against whom exists a judgment for the payment of money or who is interested in any property up-

on which any such judgment is a lien, may pay the amount due on such judgment to the clerk of the court in which the judgment was rendered, and the clerk shall thereupon satisfy the judgment upon the records of the court. If such judgment has been entered in the records or docketed in the judgment lien docket of any other county than the county in which it was rendered, then a certified copy of the satisfaction may be recorded in the journal of the circuit court of such other county and the clerk of that court shall thereupon satisfy the judgment upon the records of that court. Unless the clerk of the court in which the judgment was rendered sooner turns over the money paid to him on the judgment to the person determined by such court to be entitled thereto, he shall turn the money over to the county treasurer of his county, who shall give the clerk duplicate receipts therefor. One of the receipts shall be filed with the papers in the case in which such judgment was rendered, and the other shall be retained by the clerk. The county treasurer shall at any time pay the money over to the person who shall be determined to be entitled thereto by the order of the court in which the judgment was rendered.

18.420 Proceedings after discharge in bankruptcy. Any person discharged from his debts pursuant to the federal bankruptcy laws may file in any court or tribunal in which a judgment has at any time been rendered or a transcript thereof filed against him, either before or after such discharge, a motion in the suit, action or proceeding for the discharge of the judgment from the record. If it appears to the court that he has been discharged from the payment of the judgment or the claim upon which the judgment was based, the court shall order that the judgment be discharged and satisfied of record, and thereupon the clerk of the court shall enter a satisfaction thereof; however, no such order shall be granted except upon such notice to the parties interested as the court or judge thereof may by order prescribe.

18.430 Contribution among judgment debtors; subrogation of surety. When property liable to an execution against several persons is sold thereon, and more than a due proportion of the judgment is levied upon the property of one of them, or one of them pays, without a sale, more than his proportion, he may compel contribution from the others; and when a judgment is against several, and is upon an obligation or contract of one of them as security for another, and the surety pays the amount, or any part thereof, either by sale of his property or before sale, he may compel repayment from the principal. In such cases, the person so paying or contributing shall be entitled to the benefit of the judgment to enforce contribution or repayment, if within 30 days after his payment he files with the clerk of the court where the judgment was rendered, notice of his payment and claim to contribution or repayment; upon filing such notice, the clerk shall make an entry thereof in the margin of the docket where the judgment is entered.

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Sam R. Haley, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.

Done at Salem, Oregon,
on November 1, 1959

Sam R. Haley
Legislative Counsel

OUTSIDE

Volume 1—Form