Chapter 19

1959 REPLACEMENT PART
(1962 reprint)

Appeals

19.005 Definitions for ORS 19.023 to 19.190
19.010 Appealable judgments, decrees and orders; amount in controversy; appeals in special proceedings
19.020 Who may appeal; designation of parties
19.023 How appeal taken
19.026 Time for service and filing of notice of appeal
19.029 Contents of notice of appeal
19.033 Jurisdictional effect of filing notice; relief from nonjurisdictional errors
19.035 Filing fee for appeal; sending copy of notice of appeal and fee to Clerk of Supreme Court
19.038 Filing of undertaking on appeal; exception to sureties
19.040 Form of undertaking on appeal; conditions for stay of proceedings; enforcement against sureties on dismissal of appeal
19.045 Dispensing with undertaking by stipulation
19.050 Sale of perishable property when proceeding stayed; stay without further undertaking when appellant is a fiduciary, and in certain other cases
19.060 Restitution bond for enforcement of judgment or decree on contract, notwithstanding stay
19.065 Preparation and transmission of record
19.074 Trial court file part of record; designation by parties of additional matter to be included in record; statement of points on appeal; preparation of transcript
19.078 Certification of transcript; copies required; correction of errors; settlement order
19.084 One original transcript required; cost of preparation
19.088 Agreed narrative statement
19.094 Extensions of time
19.098 Delivery of record to Supreme Court; when returned
19.104 Service of papers
19.108 Defective record; dismissal of appeal
19.114 Bill of exceptions not required
19.118 When appeal heard at Pendleton
19.125 Scope of review by Supreme Court
19.130 Action by Supreme Court on appeal; new trial; reversal upon loss or destruction of reporter's notes, tapes or audio records
19.140 Review of intermediate orders; directing restitution
19.160 Damages upon affirmance of judgment
19.170 Powers of successor judge in regard to appeal
19.180 Memorandum decisions
19.190 How decision of Supreme Court given and enforced; effect as to lien of judgment

CROSS REFERENCES

Constitutional provisions as to appeals and appellate jurisdiction, Const. Art. VII (A), §§ 2, 3; Art. VII (O), § 6
Costs on appeal, 20.140, 20.310
County courts, appeals from, 5.120, 203.200
Criminal cases, appeals in, Chs. 138, 157
District courts, appeals from, 46.250, 46.260
Duties relating to administration of justice, enforcement of performance of, 1.025
Fees on appeal to Supreme Court, 21.010 to 21.030
Justice's courts, appeals from in civil actions, Ch. 53
Juvenile courts, appeal from final order of, 419.561
Review, writ of, 34.010 to 34.100
Tax court, appeal from, review and action, 305.440, 305.445

19.010

Abandoned property, appeal from order of disposition, 98.402
Adoption decree, appeal from, 109.345, 109.370, 109.381
Appearance, special, when not waived by subsequent general appearance, 16.150
Arbitration award, appeal from, 33.340
Costs, judgment taxing, appeal from, 20.220
Declaratory judgment proceedings, appeals from, 28.070
Demurrer to jurisdiction not waived by answering over, 16.330
Heirship, decree determining, appeal from, 117.560
Mandamus proceedings, appeals in, 34.240
Striking of sham or frivolous pleadings, compliance with order for, does not waive right of appeal, 16.100, 16.400

19.020

Contempts appealable by both parties, 33.150
Habeas corpus appealable by both parties, 34.710

19.023

Bills of revivor and review abolished, 16.460
Eminent domain proceedings, appeals in, Ch. 35
Review, writ of, 34.060
Service of notices, 16.770 to 16.850

19.026

Time, how computed, 174.120
Time for publication of legal notices, how computed, 193.060

19.038

Bail on arrest, qualification and justification of sureties on, 29.580 to 29.610
Deposits in lieu of bond, Ch. 22
Forcible entry and detainer proceeding, additional undertaking on appeal from judgment in, 105.160
State, county or city not required to give bond, 22.010

19.040

Costs on appeal, 20.140, 20.310
Deposits in lieu of bond, Ch. 22
Forcible entry and detainer proceeding, additional undertaking in, 105.160
Lien of judgment, when ceases on execution of supersedeas bond, 18.350
State, county or city not required to give bond, 22.010
Surety company bond authorized, 747.080

19.050

Condemnation of county road by public utility, appeal does not operate as stay, 772.070
Contempt proceeding, appeal does not operate as stay, 33.150

19.065

Transcript for appellant without funds in post-conviction proceeding, 138.500

19.074

Exceptions, noting of, on trial, 17.505 to 17.515
Whole testimony, instructions, and other matter may be attached to bill of exceptions on appeal, Const. Art. VII (A), § 3

19.118

Place for holding Pendleton session, 2.090

19.125

Declaratory judgment proceedings, review of, 28.070
Divorce and annulment decrees, scope, 107.100
Equity suits, findings of trial court not conclusive in, 17.440
Exceptions not considered on appeal unless material and affect substantial rights, 17.505
Exceptions to jury instructions must be express to be reviewable, 17.510
New trial granted on court's own motion, review of order for, 17.630
Powers of Supreme Court on appeal, Const. Art. VII (A), § 3

19.130

Justices' courts, powers of appellate court in reviewing judgments of, 53.125
Powers of Supreme Court on appeal, Const. Art. VII (A), § 3

19.140

Costs, judgment taxing, appeal from, 20.220

19.180

Concise written statements of decisions required, Const. Art. VII (A), § 4; Art. VII (O), § 7

19.190

Lien of judgment, when ceases upon execution of supersedeas bond, 18.350

19.005 Definitions for ORS 19.023 to 19.190. As used in this section and in ORS 19.023 to 19.190, unless the context otherwise requires:

(1) "Exhibits" means exhibits offered and received or rejected in the trial court.

(2) "Judgment" means judgment, decree or appealable order, as provided in ORS 19.010.

(3) "Trial court file" means all the original papers filed in the trial court whether before or after judgment, including but not limited to the summons and proof of service thereof, pleadings, demurrers, motions, affidavits, depositions, stipulations, orders, the judgment, the notice of appeal and the undertaking on appeal.

(4) "Transcript" means the transcript of the court reporter's report as provided in ORS 8.340, 8.350 and 8.360.

(5) "Record" or "record of the case" means the trial court file and any transcript, narrative statement and exhibits.

(6) "Clerk" means the county clerk of, and as such ex officio clerk of the trial court for, the county in which the judgment or appealable order is filed and entered, or either.

[1959 c.558 §2]

19.010 Appealable judgments, decrees and orders; amount in controversy; appeals in special proceedings. (1) A judgment or decree may be reviewed on appeal as prescribed in this chapter.

(2) For the purpose of being reviewed on appeal the following shall be deemed a judgment or decree:

(a) An order affecting a substantial right, and which in effect determines the action or suit so as to prevent a judgment or decree therein.

(b) An interlocutory decree in a suit for the partition of real property, defining the rights of the parties to the suit and directing sale or partition.

(c) A final order affecting a substantial right, and made in a proceeding after judgment or decree.

(d) An order setting aside a judgment and granting a new trial.

(3) No appeal to the Supreme Court shall be taken or allowed in any action for the recovery of money or damages only unless it appears from the pleadings that the amount in controversy exceeds $250.

(4) An appeal may be taken from the circuit court to the Supreme Court in any special statutory proceeding under the same conditions, in the same manner and with like effect as from a judgment, decree or order entered in an action or suit, unless such appeal is expressly prohibited by the law authorizing such special statutory proceeding.

19.020 Who may appeal; designation of parties. Any party to a judgment or decree, other than a judgment or decree given by confession or for want of an answer, may appeal therefrom. The plaintiff may appeal from a judgment or decree given by confession or for want of an answer where such judgment or decree is not in accordance with the relief demanded in the complaint. The party appealing is known as the appellant, and the adverse party as the respondent; but the title of the action or suit is not changed in consequence of the appeals.

19.023 How appeal taken. (1) An appeal to the Supreme Court shall be taken in the manner prescribed in ORS 19.023 to 19.190.

(2) A party to a judgment desiring to appeal therefrom, or some specified part thereof, shall cause a notice, signed by himself or his attorney, to be served on such adverse party or parties as have appeared in the action, suit or proceeding and file the original, with proof of service indorsed thereon or affixed thereto, with the clerk.

(3) The notice shall be in the form prescribed in ORS 19.029, shall be filed within the time prescribed in ORS 19.026, and shall be accompanied by the designation required by ORS 19.074.

[Formerly 19.030]

19.026 Time for service and filing of notice of appeal. (1) Except as provided in subsections (2) and (3) of this section, the notice of appeal shall be served and filed within 30 days after the entry of the judgment appealed from.

(2) Where any party has served and filed a motion for a new trial or a motion for judgment notwithstanding the verdict, the notice of appeal of any party shall be served and filed within 30 days from the earlier of the following dates:

(a) The date of entry of the order disposing of the motion.

(b) The date on which the motion is deemed denied, as provided in ORS 17.615.

(3) Any other party desiring to appeal may serve and file his notice of appeal within 10 days after the expiration of the time allowed by subsections (1) and (2) of this section.

(4) When more than one notice of appeal is filed, the date on which the last such notice was filed shall be used in determining the time for preparation of the transcript, filing briefs and other steps in connection with the appeal.
[1959 c.558 §4]

19.029 Contents of notice of appeal. The notice of appeal shall contain the following:

(1) The title of the cause.

(2) The names of the parties and their attorneys.

(3) A notice to the adverse party or his attorney that an appeal is taken from the judgment or some specified part thereof.
[1959 c.558 §5]

19.030 [Amended by 1959 c.558 §3; renumbered 19.023]

19.033 Jurisdictional effect of filing notice; relief from non-jurisdictional errors. (1) When the notice of appeal has been served and filed as provided in ORS 19.023 to 19.029, the Supreme Court shall have jurisdiction of the cause, but the trial court shall have such powers in connection with the appeal as are conferred upon it by law.

(2) The serving and filing of the notice of appeal as provided in ORS 19.023 to 19.029 is jurisdictional and may not be waived or extended.

(3) After the Supreme Court has acquired jurisdiction of the cause, the omission of a party to perform any of the acts required in connection with an appeal, or to perform such acts within the time required, shall be cause for dismissal of the appeal. In the event of such omission, the Supreme Court, on motion of the respondent or, after notice, on its own motion, may dismiss the appeal if in its judgment the omission is without reasonable excuse or it may permit the party responsible for the omission to rectify the omission, by amendment or otherwise, on such terms and within such time as may be just.
[1959 c.558 §6]

19.035 Filing fee for appeal; sending copy of notice of appeal and fee to Clerk of Supreme Court. (1) At the time the notice of appeal is filed with the clerk as provided in ORS 19.023, the appellant shall deposit with the clerk the amount of the Supreme Court filing fee.

(2) Within 10 days after a notice of appeal has been filed the clerk shall send to the Clerk of the Supreme Court, at Salem, a certified copy of the notice of appeal and the appellant's Supreme Court filing fee.
[1959 c.558 §7]

19.038 Filing of undertaking on appeal; exception to sureties. (1) Except as provided in ORS 19.045, within 10 days after the filing of the notice of the appeal, the appellant shall serve on the adverse party or his attorney an undertaking as provided in ORS 19.040, and within such 10 days shall file with the clerk the original undertaking, with proof of service indorsed thereon.

(2) Within five days after the service of the undertaking, the adverse party or his attorney may except to the sufficiency of the sureties in the undertaking, or he shall be deemed to have waived his right thereto.

(3) The qualifications of sureties in the undertaking on appeal shall be the same as in bail on arrest, and, if excepted to, they shall justify in like manner.
[1959 c.558 §8]

19.040 Form of undertaking on appeal; conditions for stay of proceedings; enforcement against sureties on dismissal of appeal. (1) The undertaking of the appellant shall be given with one or more sureties, to the effect that the appellant will pay all damages, costs and disbursements which may be awarded against him on the appeal; but such undertaking does not stay the proceedings, unless the undertaking further provides to the effect following:

(a) If the judgment or decree appealed from is for the recovery of money, or of personal property or the value thereof, that if the same or any part thereof is affirmed, the appellant will satisfy it so far as affirmed.

(b) If the judgment or decree appealed from is for the recovery of the possession of real property, for a partition thereof, or the foreclosure of a lien thereon, that during the possession of such property by the appellant he will not commit, or suffer to be committed, any waste thereon, and that if such judgment or decree or any part thereof is affirmed, the appellant will pay the value of the use and occupation of such property, so far as affirmed, from the time of the appeal until the delivery of the possession thereof, not exceeding the sum there-

in specified, to be ascertained and tried by the court or judge thereof.

(c) If the decree appealed from requires the transfer or delivery of any personal property, unless the things required to be transferred or delivered are brought into court, or placed in the custody of such officer or receiver as the court may appoint, that the appellant will obey the decree of the appellate court. The amount of such undertaking shall be specified therein, and be fixed by the court or judge thereof.

(d) When the decree appealed from is for the foreclosure of a lien, and also against the person for the amount of the debt secured thereby, the undertaking shall also be to the effect that the appellant will pay any portion of such decree remaining unsatisfied after the sale of the property upon which the lien is foreclosed.

(2) When the decree appealed from requires the execution of a conveyance or other instrument, execution of the decree is not stayed by the appeal, unless the instrument is executed and deposited with the clerk within the time allowed to file the undertaking, to abide the decree of the appellate court.

(3) If the appeal is dismissed, the judgment or decree, so far as it is for the recovery of money, may, by the appellate court, be enforced against the sureties in the undertaking for a stay of proceedings, as if they were parties to the judgment or decree.

19.045 Dispensing with undertaking by stipulation. By written stipulation of the parties, the undertaking provided for in ORS 19.040 may be dispensed with. The stipulation shall be filed with the clerk within 10 days after the filing of the notice of appeal. The filing of the stipulation shall, upon approval of the trial court, have such effect with respect to staying the judgment as is provided for in the stipulation.
[1959 c.558 §9]

19.050 Sale of perishable property when proceedings stayed; stay without further undertaking when appellant is a fiduciary, and in certain other cases. When the proceedings are stayed, if perishable property has been seized to satisfy or secure the judgment or decree, or has been directed to be sold thereby, the trial court or judge thereof may order the property to be sold as if the proceedings were not stayed, and the proceeds thereof to be deposited or invested to abide the decision of the appellate court. The court or judge thereof, in its discretion, may dispense with or limit the further undertaking required by paragraphs (a) to (d) of subsection (1) of ORS 19.040, when the appellant is an executor, administrator, trustee, or other person acting in another's right. In cases not provided for in such paragraphs, when an appeal is perfected, with an undertaking for the appeal only, proceedings shall be stayed as if the further undertaking thereof had been given.

19.060 Restitution bond for enforcement of judgment or decree on contract, notwithstanding stay. If the judgment or decree has been given in an action or suit upon a contract, notwithstanding an appeal and undertaking for the stay of proceedings, the respondent may proceed to enforce such judgment or decree, if within 10 days from the time the appeal is perfected he files with the clerk an undertaking, with one or more sureties, to the effect that if the judgment or decree is reversed or modified the respondent will make such restitution as the appellate court may direct. Such undertaking may be excepted to by the appellant in like manner and with like effect as the undertaking of an appellant, and the sureties therein shall have the same qualifications.

19.065 Preparation and transmission of record. The record of the case shall be prepared and transmitted to the Supreme Court in the manner provided in ORS 19.074 to 19.098.
[1959 c.558 §10]

19.070 [Repealed by 1959 c.558 §51]

19.074 Trial court file part of record; designation by parties of additional matter to be included in record; statement of points on appeal; preparation of transcript. (1) In every case, the trial court file shall be transmitted to the Supreme Court as part of the record. Unless a transcript or narrative statement in lieu of a transcript is prepared as provided in ORS 19.074 to 19.098, the record shall consist of the trial court file alone.

(2) At the time of filing the notice of appeal the appellant shall serve and file:

(a) A designation of such parts of the proceedings and exhibits as he desires to be included in the record in addition to the trial court file.

(b) Except as provided in paragraph (c) of this subsection, a plain and concise statement of the points on which he intends to rely. On appeal, the appellant may rely on no other points than those set forth in such statement.

(c) If the appellant has designated for inclusion in the record all the testimony and all the instructions given and requested, no statement of points is necessary.

(3) Within 10 days after the filing of the designation and the statement of points, if any, any other party may serve and file a designation of additional parts of the proceedings and exhibits to be included in the record.

(4) The reporter shall prepare a transcript of such parts of the proceedings as are designated as provided in subsections (2) and (3) of this section.

(5) If after 10 days after the notice of appeal is filed no party has designated any parts of the proceedings or exhibits to be included in the record, the clerk shall promptly notify the Clerk of the Supreme Court, at Salem.
[1959 c.558 §11]

19.078 Certification of transcript; copies required; correction of errors; settlement order. (1) The transcript shall be certified by the reporter or the trial judge and shall be filed by the appellant with the clerk within 30 days after the filing of the notice of appeal. Except as provided in subsection (2) of this section, the appellant shall serve the respondent with a copy of the transcript and shall, at the time of filing the original transcript, file proof of such service with the trial court clerk.

(2) If there are two or more parties in addition to the appellant who have appeared in the trial court and who are represented by different attorneys, the appellant shall at the time of filing the original transcript deposit a copy thereof with the clerk for use by all such other parties. The appellant shall serve notice of such deposit upon all such parties and file proof of such service with the clerk.

(3) Within 10 days after the transcript is filed, any party may move the trial court for an order to correct any errors appearing in the transcript or, where the interests of justice require, to have additional parts of the proceedings included in the transcript. Thereupon, the trial court shall direct the making of such corrections and the adding of such matter as may be appropriate and shall fix the time within which such corrections or additions shall be made.

(4) Promptly after the expiration of 10 days after the filing of the transcript, or the denial of a motion to correct or add to the transcript, or upon the making of such corrections or additions as may be ordered, whichever last occurs, the appellant shall, and any other party may, make application to the trial court for an order settling the transcript. The trial court shall enter such order and the clerk shall send a copy thereof to the Clerk of the Supreme Court, at Salem.
[1959 c.558 §12]

19.080 [Amended by 1959 c.558 §18; renumbered 19.118]

19.084 One original transcript required; cost of preparation. (1) Where more than one appeal is taken from the same judgment, only one original transcript shall be filed.

(2) The cost of preparing the transcript and copy shall be paid by the party designating it to be made, except that where a party has designated additional parts of the proceedings to be included in the transcript as provided in subsection (3) of ORS 19.074, the trial court on motion of such party may direct that the cost of preparing all or part of the additional parts of the transcript be paid by the appellant if it appears that such additional parts are necessary to the determination of the appeal. The cost of preparing the original and copy of the transcript shall be taxable as part of the costs on appeal.
[1959 c.558 §13]

19.088 Agreed narrative statement. In lieu of or in addition to a transcript, the parties may prepare an agreed narrative statement of the proceedings below or parts thereof. The narrative statement shall be signed by the parties or their attorneys and shall be filed with the clerk within 30 days after the filing of the notice of appeal. When such a statement is filed, the appellant shall promptly notify the Clerk of the Supreme Court, at Salem.
[1959 c.558 §14]

19.090 [Repealed by 1959 c.558 §51]

19.094 Extensions of time. The trial court may grant an extension of not more than 60 days for the performance of any act in connection with the preparation of the record. Any further extensions of time for the performance of such act may be granted only by the Supreme Court. A motion for an extension of time shall be served and filed

within the time allowed for the performance of the act, or within any extension of time that may be granted.
[1959 c.558 §15]

19.098 Delivery of record to Supreme Court; when returned. (1) After the briefs have all been filed, or the time for filing briefs has expired, the Clerk of the Supreme Court shall at such time as is convenient request the clerk to send the record to the Supreme Court. The clerk shall thereupon deliver to the Clerk of the Supreme Court, at Salem, the trial court file, the transcript or agreed narrative statement in lieu thereof, if any, and such exhibits as have been designated for inclusion in the record.

(2) Unless otherwise ordered by the Supreme Court, the trial court file and the exhibits shall be returned to the clerk after the appeal has been disposed of.
[1959 c.558 §16]

19.100 [Repealed by 1959 c.558 §51]

19.104 Service of papers. Except as otherwise provided in ORS 19.023 to 19.190, where ORS 19.023 to 19.190 require any paper to be served and filed, the paper shall be served in the manner provided in ORS 16.780 to 16.800 on all other parties who have appeared in the action, suit or proceeding and who are not represented by the same counsel as the party serving the paper, and shall be filed, with proof of service indorsed thereon, with the trial court clerk.
[1959 c.558 §27]

19.108 Defective record; dismissal of appeal. (1) When it appears to the Supreme Court that the record is erroneous or incomplete in any particular substantially affecting the merits of the appeal, on motion of a party or on its own motion the court may make such order to correct or supplement the record as may be just or may dismiss the appeal if the error or omission is without reasonable excuse.

(2) The Supreme Court at any time, or the trial court at any time before the record has been delivered to the Supreme Court as provided in ORS 19.098, may dismiss the appeal on motion based upon stipulation of the parties.

(3) Where such a dismissal is made by the trial court, the clerk shall send a certified copy of the order to the Clerk of the Supreme Court.

(4) The dismissal shall operate as an affirmance of the judgment appealed from.
[1959 c.558 §20 (enacted in lieu of ORS 19.110)]

19.110 [Repealed by 1959 c.558 §19 (ORS 19.108 enacted in lieu of ORS 19.110)]

19.114 Bill of exceptions not required. A bill of exceptions is not required. For the purposes of section 3, Article VII (Amended) of the Oregon Constitution, the transcript, as defined in ORS 19.005, is the bill of exceptions.
[1959 c.558 §22]

19.118 When appeal heard at Pendleton. An appeal taken from any circuit court in any county lying east of the Cascade Mountains, except Klamath and Lake, shall be heard at Pendleton, unless otherwise stipulated between the parties. All other appeals to the Supreme Court shall be heard at Salem, unless otherwise ordered by the Supreme Court.
[Formerly 19.080]

19.120 [Repealed by 1959 c.558 §51]

19.125 Scope of review by Supreme Court. (1) Upon an appeal from a judgment in an action at law, the scope of review shall be as provided in section 3, Article VII (Amended) of the Oregon Constitution.

(2) No judgment shall be reversed or modified except for errors substantially affecting the rights of the parties.
[1959 c.558 §21]

19.130 Action by Supreme Court on appeal; new trial; reversal upon loss or destruction of reporter's notes, tapes or audio records. (1) Upon an appeal, the Supreme Court may affirm, reverse or modify the judgment or part thereof appealed from as to any or all of the parties joining in the appeal, and may include in such decision any or all of the parties not joining in the appeal, except a codefendant of the appellant against whom a several judgment might have been given in the court below; and may, if necessary and proper, order a new trial.

(2) Where in the trial court a motion for judgment notwithstanding the verdict and a motion for a new trial were made in the alternative, and an appeal is taken from a judgment notwithstanding the verdict or an order granting a new trial, the Supreme Court may consider the correctness of the ruling of the trial court on either or both motions if such ruling is assigned as erroneous

in the brief of any party affected by the appeal, without the necessity of a cross-appeal.

(3) Whenever it appears that an appeal cannot be prosecuted, by reason of the loss or destruction, through no fault of the appellant, of the reporter's notes, tapes or audio records, or of the exhibits or other matter necessary to the prosecution of the appeal, the judgment appealed from may be reversed and a new trial ordered as justice may require.

[Amended by 1955 c.497 §6; 1959 c.558 §24]

19.140 Review of intermediate orders; directing restitution. Upon an appeal, the appellate court may review any intermediate order involving the merits or necessarily affecting the judgment or decree appealed from; and when it reverses or modifies such judgment or decree, may direct complete restitution of all property and rights lost thereby.

19.150 [Amended by 1959 c.33 §1; repealed by 1959 c.558 §25 (ORS 19.190 enacted in lieu of ORS 19.150)]

19.160 Damages upon affirmance of judgment. Whenever a judgment or decree is affirmed on appeal, and it is for recovery of money, or personal property or the value thereof, the judgment or decree shall be given for 10 percent of the amount thereof, for damages for the delay, unless it appears evident to the appellate court that there was probable cause for taking the appeal.

19.170 Powers of successor judge in regard to appeal. In case of death, resignation, expiration of the term of office or vacancy in office for any other cause of the judge before whom the matter was tried, or in case illness or other cause prevents him from performing his duties, his successor in office or any other judge assigned to perform his duties, may take any action with respect to the appeal which the judge who tried it could take.

[1959 c.558 §17]

19.180 Memorandum decisions. The Supreme Court may decide cases before it by means of memorandum decisions and shall prepare full opinions only in such cases as it deems proper.

[1959 c.558 §23]

19.190 How decision of Supreme Court given and enforced; effect as to lien of judgment. (1) The decision of the Supreme Court shall be entered in the journal, and the cause remitted by mandate to the court below for further proceedings as therein directed. If a new trial is ordered, upon the receipt of the mandate by the clerk of the court below, the decision and order shall be entered in the journal and thereafter the cause shall be deemed pending and for trial in such court, according to the directions of the Supreme Court. If a new trial is not ordered, upon the receipt of the mandate by such clerk, a judgment or decree shall be entered in the journal and docketed in pursuance of the direction of the Supreme Court, in like manner and with like effect as if the same was given in the court below.

(2) If judgment is given against the appellant, it shall be entered against his sureties also, in like manner and with like effect, according to the nature and extent of their undertaking.

(3) Except as provided in ORS 18.350, an appeal shall not discharge the lien of a judgment and unless the same is reversed, the lien thereof shall be merged and continue in the affirmed or modified judgment or decree given on appeal, from the time of the entry and docketing of the same in the court below.

[1959 c.558 §26 (enacted in lieu of ORS 19.150)]

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