Chapter 53

1959 REPLACEMENT PART
(1963 reprint)

Appeals in Civil Actions; Writ of Review

53.010 Appeals from justices' courts; when allowable
53.020 Court to which appeal lies; time to take; designation of parties
53.030 Manner of taking appeal; notice; undertaking for costs and disbursements
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CROSS REFERENCES

Enforcement of court's or court officer's duty relating to administration of justice, 1.025
Supervisory control and appellate jurisdiction of circuit court over inferior courts, Const. Art. VII (O), § 9

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Appeals from small claims department, 55.110

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County clerk to serve as clerk of the circuit court, Const. Art. VII (O), § 15

53.125

Action by Supreme Court on appeal, 19.130

53.010 Appeals from justices' courts; when allowable. Any party to a judgment in a civil action in a justice's court, other than a judgment by confession or for want of an answer, may appeal therefrom when the sum in controversy is not less than $30, or when the action is for the recovery of personal property of the value of not less than $30, exclusive of disbursements in either case, also when the action is for the recovery of the possession of real property under ORS 105.110, but the appeal in an action of forcible entry and detainer taken by the defendant must be perfected as provided in ORS 105.160.

53.020 Court to which appeal lies; time to take; designation of parties. An appeal is taken to the circuit court of the county wherein the judgment is given, and may be taken in open court at the time the judgment appealed from is given, or within 30 days from the date of the entry thereof. The party appealing is known as the appellant and the adverse party as the respondent, but the title of the action is not thereby changed.

53.030 Manner of taking appeal; notice; undertaking for costs and disbursements. An appeal is taken either by giving oral notice thereof in open court at the time of the rendition of the judgment appealed from, which shall be the only notice required, or at any time within 30 days thereafter by serving a written notice thereof on the adverse party, or his attorney, and filing the original with the proof of service indorsed thereon with the justice, and by giving the undertaking for the costs and disbursements on the appeal, as provided in ORS 53.040. A written acknowledgment of service by the respondent or his attorney, indorsed on the notice of appeal, shall be sufficient proof of service. If the appeal is taken by giving oral notice as provided in this section, the fact that such notice has been given shall be noted in the docket of the justice.

53.040 Requisites of undertaking for costs and disbursements and stay of proceedings. The undertaking of the appellant must be given with one or more sureties, to the effect that the appellant will pay all costs and disbursements that may be awarded against him on the appeal. The undertaking does not stay the proceedings unless the undertaking further provides that the appellant will satisfy any judgment that may be given against him in the appellate court on the appeal. The undertaking must be filed with the justice within five days after the notice of appeal is given or filed.

53.050 Stay of proceedings without undertaking; when. If the judgment appealed from is in favor of the appellant, the proceedings thereon are stayed by the notice of appeal and the undertaking for the costs of the appeal.

53.060 Allowance of appeal; recall of execution when stay granted. When an appeal is taken, the justice must allow the same and make an entry thereof in his docket, stating whether the proceedings are thereby stayed or not. When the proceedings are stayed, if an execution has been issued to enforce judgment, the justice must recall the execution by written notice to the officer holding it. Thereupon it must be returned and all property taken thereon and not sold released; and if the body of the defendant has been taken on execution he must be discharged from custody.

53.070 Qualification and justification of sureties. All sureties on an undertaking on appeal must have the qualifications of bail upon arrest; and, if required by the adverse party within five days after filing the undertaking, they must justify before the justice in like manner.

53.080 Enforcement of judgment notwithstanding appeal and undertaking for stay of proceedings. When a judgment has been given for money in an action upon a contract to pay money, notwithstanding an appeal and undertaking for the stay of proceedings, the respondent may enforce the judgment, if within five days from the allowance of the appeal he files with the justice an undertaking, with one or more sureties, to the effect that if the judgment is changed or modified on the appeal he will make such restitution as the appellate court may direct. This undertaking must be taken by the justice on not less than two days' notice to the other party.

53.090 Certified transcript to be filed; proceedings, on appeal, in the circuit court. Within 30 days next following the allowance of the appeal, the appellant must cause to be filed with the clerk of the circuit court a transcript of the cause. The transcript must contain a copy of all the material entries in

the justice's docket relating to the cause or the appeal, and must have annexed thereto all the original papers relating to the cause or the appeal and filed with the justice. Upon the filing of the transcript with the clerk of the circuit court, the appeal is perfected. Thenceforth the action shall be deemed pending and for trial therein as if originally commenced in such court, and the court shall have jurisdiction of the cause and shall proceed to hear, determine and try it anew, disregarding any irregularity or imperfection in matters of form which may have occurred in the proceedings in the justice's court. If the transcript and papers are not filed with the clerk of the circuit court within the time provided, the circuit court, or the judge thereof, may by order extend the time for filing the same upon such terms as the court or judge may deem just. But such order shall be made within the time allowed to file the transcript.

53.100 Amendment of pleadings in circuit court. The appellate court may, in furtherance of justice and upon such terms as may be just, allow the pleadings in the action to be amended so as not to change substantially the issue tried in the justice's court or to introduce any new cause of action or defense.

53.110 Dismissal of appeal; judgment on dismissal or after trial; judgment against sureties. The appellate court may dismiss an appeal from a justice's court if it is not properly taken and perfected. When an appeal is dismissed the appellate court must give judgment as it was given in the court below, and against the appellant for the costs and disbursements of the appeal. When judgment is given in the appellate court against the appellant, either with or without the trial of the action, it must also be given against the sureties in his undertaking, according to its nature and effect.

53.120 Insufficiency of undertaking as ground for dismissal of appeal. An appeal cannot be dismissed on the motion of the respondent on account of the undertaking therefor being defective, if the appellant before the determination of the motion to dismiss will execute a sufficient undertaking and file it in the appellate court, upon such terms as may be deemed just.

53.125 Judgment or order of appellate court. The appellate court may give a final judgment in the cause, to be enforced as a judgment of such court; or the appellate court may give such other judgment or order as may be proper, and direct that the cause be remitted to the court below for further proceedings in accordance with the mandate of the appellate court.
[1959 c.558 §47]

53.130 Writ of review in civil cases. No provision of ORS 53.010 to 53.125, in relation to appeals or the right of appeal in civil cases, shall be construed to prevent either party to a judgment given in a justice's court from having it reviewed in the circuit court for errors in law appearing upon the face of the judgment or the proceedings connected therewith, as provided in ORS 34.010 to 34.100.

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

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