Chapter 20

1967 REPLACEMENT PART

Costs and Disbursements

GENERALLY

20.010 Costs defined; compensation of attorneys
20.020 Allowance for disbursements
20.030 Costs and disbursements in suit
20.040 When costs allowed of course to plaintiff in action
20.050 Costs and disbursements when several actions are brought on same cause of action
20.055 Premium for undertaking recoverable with disbursements
20.060 When costs allowed to defendant in action
20.070 Amount of costs
20.080 Attorney fees in action for damages for personal or property injury
20.085 Costs and attorney fees in inverse condemnation proceedings
20.090 Attorney fees in proceeding on check dishonored for lack of funds or because payment stopped
20.100 Costs on motion, and in cases not otherwise provided for
20.110 Costs on granting postponement or other application allowable on terms
20.120 Costs on review of decision of officer, tribunal, or court of inferior jurisdiction
20.130 Proceeding to which state or public corporation is party
20.140 State or other public corporation not required to advance costs; payment of costs recovered
20.150 Recovery of costs and disbursements when party represented by another
20.160 Liability of attorney of nonresident or foreign corporation plaintiff; security for costs
20.170 Qualification of and exception to sureties; deposit in lieu of undertaking
20.180 Effect of tender as to costs

TAXATION AND COLLECTION

20.210 Taxation; statement of disbursements; objections
20.220 Hearing and determination of objections; appeal
20.230 Collection of costs and disbursements by execution

TAXATION IN THE SUPREME COURT

20.310 Taxation in Supreme Court; items taxable
20.320 Statement of costs and disbursements; objections; fees allowed of course
20.330 Costs and disbursements in cases of original jurisdiction

CROSS REFERENCES

Adverse claims to property seized under writ of execution or attachment, costs and disbursements in trial of, 23.340
Arbitration, witness fees taxed to losing party, 33.300
Blood type examiner's compensation, taxability as costs, 109.256
Changing place of trial of action in justices' courts, costs paid by applicant for, 52.530
Cooperative corporation, proceedings involving, costs, 62.440
Counsel and transcript for appellant without funds in post-conviction proceedings, 138.500, 138.590
Counsel appointed by court, expenses and fees, 133.635, 135.330
Criminal actions, costs in, 137.200, 138.300
Declaratory judgment proceeding, costs in, 28.100
Depositions, costs in connection with, when allowable, 45.200
District courts, costs and disbursements in, 46.210
Eminent domain proceeding, costs in, 35.110
Fees, Ch. 21
Foreign judgment, enforcement of, costs in, 24.140
Guardian, compensation and expenses, 126.341
Habeas corpus, liability for costs of producing party, 34.450
Indigent injured in automobile accident, cost of foreclosing lien, 445.260
Probate proceedings, costs and disbursements in, 116.560
Referee's ruling, disbursements for evidence recorded after exceptions to, liability for, 17.755
Retail instalment contracts, fees and costs limited in actions on, 83.100
Tax court costs and disbursements, 305.490
Transcript in appeal, cost of preparation, 19.084
Transfer from district court to circuit court, costs, 46.075
Trial fees, who to pay in first instance, 21.600
Unemployment insurance contributions, immediate assessment to collect, costs of, 657.681
Venue, change of, costs, 14.140
Wages, collection of, costs, disbursements and attorney fees, 652.200
Workmen's compensation cases, attorney fees, 656.382, 656.386, 656.593

20.010

Declaratory judgment proceeding, costs in, 28.100
Eminent domain proceeding, costs in, 35.110
Fees for attorney in action against foreign or alien insurer, 746.350

20.020

Arrested defendant, fees for maintenance of, taxed as disbursements, 29.730
Compensation to person serving summons taxed as disbursements, 15.060
Fees, generally, Ch. 21
Final record in action, cost of, taxed as disbursements, 18.335
Jury trial fees taxed as disbursements, 21.600, 52.420
21.600, 52.420
Reporter's fees for taking notes, taxed as disbursements, 21.460
Supreme Court fees taxed as disbursements, 21.010

20.030

Legatees or next of kin, suits against, apportionment of costs in, 121.270
Partition suits, costs and disbursements in, 105.405

20.040
District courts, costs in, 46.210, 46.221
20.070
Costs allowed defendant militiaman, 399.225
Declaratory judgment proceeding, costs in, 28.100
Eminent domain proceeding, costs in, 35.110
20.085
Eminent domain procedure, Ch. 35
20.100
See cross references at head of this chapter
20.110
Venue, change of, costs, 14.140
20.120
Writ of review, proceedings on, 34.010 to 34.100
20.130
Criminal actions, costs in, liability of county for, 137.200, 138.300
State, county and public corporations exempt from court fees, 21.560 to 21.580
20.140
State and county exempted from prepayment of trial fees, 21.570, 21.580
20.150
Guardians representing wards in legal proceedings, 126.275
Legatees or next of kin, suits against, apportionment of costs in, 121.270
Partition suits, apportionment of costs in, 105.405
Probate proceedings, costs in, 116.560
Undertaking of party in suit against trustee, 128.270
20.170
Deposit in lieu of bond, Ch. 22
20.180
Compromise offer, liability for costs following rejection of, 17.055
Offer in writing to pay or deliver as equivalent to actual tender, 81.010
20.230
Collection of fees by officer, 21.660
20.310
Supreme Court fees taxed as disbursements, 21.010
Transcript on appeal, cost of preparation, 19.084

GENERALLY

20.010 Costs defined; compensation of attorneys. The measure and mode of compensation of attorneys shall be left to the agreement, expressed or implied, of the parties; but there may be allowed to the prevailing party in the judgment or decree certain sums by way of indemnity for his attorney fees in maintaining the action or suit, or defense thereto, which allowances are termed costs.

20.020 Allowance for disbursements. A party entitled to costs shall also be allowed for all necessary disbursements, including the fees of officers and witnesses, the necessary expenses of taking depositions, the expense of publication of the summons or notices, and the postage where the same are served by mail, the compensation of referees, and the necessary expense of copying any public record, book or document used as evidence on the trial.

20.030 Costs and disbursements in suit. In a suit, costs and disbursements shall be allowed to a party in whose favor a decree is given, in like manner and amount as an action, without reference to the amount recovered or the value of the subject of the suit, unless the court otherwise directs.

20.040 When costs allowed of course to plaintiff in action. Costs are allowed, of course, to the plaintiff upon a judgment in his favor in:

(1) An action for the recovery of the possession of real property, or where a claim of title or interest in real property, or right to the possession thereof, arises upon the pleadings, or is certified by the court to have come in question upon the trial.

(2) Actions for fines and forfeitures, and the actions provided for in ORS 30.310, 30.315 to 30.330, 30.350, 30.390, 30.400, 30.510 to 30.640 and 34.810.

(3) An action involving an open mutual account where it appears to the satisfaction of the court that the sum total of such accounts of both parties exceeds $100.

(4) An action for the recovery of personal property when the value of the property claimed and the damages for the detention thereof exceed $100.

(5) An action not hereinbefore specified for the recovery of money or damages when the plaintiff shall recover $100 or more.

(6) Any action in a district, county or justice's court.

(7) Any action tried to the court without the intervention of a jury or in which before trial the plaintiff shall have consented in writing to such trial to the court, except such action be for the recovery of personal property, or money, or damages, and then only if the judgment for value and damages, or money, or damages be in the sum of $50, or more.

20.050 Costs and disbursements when several actions are brought on same cause of action. When several actions are prosecuted for the same cause of action, against several parties who might have been joined as defendants in the same action, disbursements shall be allowed the plaintiff in each action if he prevails therein, but costs shall

not be allowed the plaintiff in more than one of such actions, which shall be at his election, unless the party or parties prosecuted in the other action or actions were, at the time of the commencement of the previous action, without this state or secreted therein.

20.055 Premium for undertaking recoverable with disbursements. In all actions and proceedings a party entitled to recover disbursements therein shall be allowed and may tax and recover a sum paid a person for executing any bond, recognizance, undertaking, stipulation or other obligation therein. Such sum shall not exceed one percent per annum of the amount of the bond or other obligation.
[1967 c.359 §703a]

20.060 When costs allowed to defendant in action. Costs are allowed of course, to the defendant in the actions mentioned in ORS 20.040, unless the plaintiff is entitled to costs therein, except that on appeal to the circuit court by the defendant, costs shall be allowed to him only when the judgment appealed from was for a value and damages, or money, or damages, in excess of $250, unless before trial he consented in writing to the trial of such appeal by the court without a jury, and on such appeal obtained a judgment more favorable to him than that appealed from. When there are several defendants not united in interest, and making separate defenses by separate answers, costs shall be allowed or not to each defendant as if the action were commenced against him separately.

20.070 Amount of costs. Costs, when allowed to either party, are as follows:

(1) In the Supreme Court, on an appeal, to the prevailing party, $15.

(2) In the circuit court, to the prevailing party when judgment is given without trial of an issue of law or fact, or upon an appeal, $5; when judgment is given after trial of an issue of law or fact, $10.

(3) In the county court or justice court, one-half of the amount allowed in the circuit court.

20.080 Attorney fees in actions for damages for personal or property injury. (1) In any action for damages for an injury or wrong to the person or property, or both, of another where the amount pleaded is $1,000 or less, and the plaintiff prevails in the action, there shall be taxed and allowed to the plaintiff, as a part of the costs of the action, a reasonable amount to be fixed by the court as attorney fees for the prosecution of the action, if the court finds that written demand for the payment of such claim was made on the defendant not less than 10 days before the commencement of the action; provided, that no attorney fees shall be allowed to the plaintiff if the court finds that the defendant tendered to the plaintiff, prior to the commencement of the action, an amount not less than the damages awarded to the plaintiff.

(2) If the defendant pleads a counterclaim, not to exceed $1,000, and the defendant prevails in the action, there shall be taxed and allowed to the defendant, as part of the costs of the action, a reasonable amount to be fixed by the court as attorney fees for the prosecution of the counterclaim.
[Amended by 1955 c.554 §1]

20.085 Costs and attorney fees in inverse condemnation proceedings. In a proceeding brought under section 18, Article I or section 4, Article XI, of the Oregon Constitution by an owner of property or by a person claiming an interest in property, if the owner or other person prevails, he shall be entitled to costs and disbursements and reasonable attorney fees.
[1965 c.484 §1]

20.090 Attorney fees in proceeding on check dishonored for lack of funds or because payment stopped. In any action against the maker of any check, draft or order for the payment of money which has been dishonored for lack of funds or credit to pay the same or because payment has been stopped, the court shall allow a reasonable attorney fee to the prevailing party, in addition to disbursements.
[Amended by 1963 c.247 §1]

20.095 [1953 c.213 §1; repealed by 1965 c.611 §18]

20.100 Costs on motion, and in cases not otherwise provided for. A sum not exceeding $5 as costs may be allowed to the prevailing party on a motion, in the discretion of the court, and may be absolute or directed to abide the event of the action or suit. In any action, suit or proceeding as to which the allowance and recovery of costs may not be provided for by statute, costs

may be allowed or not, according to the measure prescribed in this chapter, and apportioned among the parties, in the discretion of the court.

20.110 Costs on granting postponement or other application allowable on terms. Upon an application to postpone a trial, the payment to the adverse party of a sum, not exceeding $10, as costs may be imposed by the court as a condition of granting the postponement, and in all cases where the procedural statutes authorize a court or judge to allow a party to do any act in an action, suit or proceeding upon terms, the court or judge may, as a condition of such allowance, impose upon such party the payment of a like sum as costs.

20.120 Costs on review of decision of officer, tribunal, or court of inferior jurisdiction. When the decision of an officer, tribunal, or court of inferior jurisdiction is brought before a court for review, such review shall, for all the purposes of costs or disbursements, be deemed an appeal to such court upon errors in law, and costs therein shall be allowed and recovered accordingly.

20.130 Proceeding to which state or public corporation is party. In all actions or suits prosecuted or defended in the name and for the use of the state, or any county or other public corporation therein, the state or public corporation is liable for and may recover costs and disbursements in like manner and with like effect as in the case of natural persons. When a natural person is joined with the state as plaintiff, or the action is upon the information of such natural person, he shall be liable in the first instance for the defendant's costs and disbursements; and such costs and disbursements shall not be recovered from the state until after execution is issued therefor against such person and returned unsatisfied in whole or in part.

20.140 State or other public corporation not required to advance costs; payment of costs recovered. In all actions or proceedings in any court in this state in which the state or any county or incorporated city is a party, or is interested, it shall not be required to advance any fees taxable as costs or disbursements. In any case in which the state, county or any incorporated city recovers costs and disbursements it shall pay to the respective state, county and district officers the fees earned by such officers and not advanced by it, and which are so recovered.

20.150 Recovery of costs and disbursements when party represented by another. In an action, suit or proceeding prosecuted or defended by an executor, administrator, trustee of an express trust or person expressly authorized by statute to prosecute or defend therein, or in which a party appears by general guardian, conservator or guardian ad litem, costs and disbursements shall be recovered or not as in ordinary cases, but if recovered shall be chargeable only upon or collected from the estate, trust fund or party represented or for whom appearance is made, unless the court or judge thereof shall order such costs and disbursements to be recovered from the executor, administrator, trustee, person, guardian or conservator personally for mismanagement or bad faith in the commencement, prosecution or defense of the action, suit or proceeding.
[Amended by 1961 c.344 §99]

20.160 Liability of attorney of nonresident or foreign corporation plaintiff; security for costs. The attorney of a plaintiff who resides out of the state or is a foreign corporation, against whom costs are adjudged in favor of a defendant, is liable to the defendant therefor; and if he neglects to pay the same, upon the information of the defendant shall be punished as for a contempt. The attorney may relieve or discharge himself from such liability by filing an undertaking at the commencement of the action or suit, or at any time thereafter before judgment or decree, for the payment to the defendant of the costs and disbursements that may be adjudged to him, executed by one or more sufficient sureties.

20.170 Qualification of and exception to sureties; deposit in lieu of undertaking. The sureties in the undertaking described in ORS 20.160 shall possess the qualifications of sureties in an undertaking for bail on arrest, and their sufficiency may be excepted to by the defendant at any time within five days from notice of filing the same, and if so, they shall justify in an amount not less than $200, in like manner and with like effect as sureties for bail on arrest. Until the time for excepting to the sufficiency of the sureties has expired or, if excepted to, until they are found sufficient, the attorney is

liable as if no undertaking had been given. A deposit of $200 or other sum which the court or judge may direct, with the clerk, may be made in lieu of such undertaking.

20.180 Effect of tender as to costs. When in any action or suit for the recovery of money or damages only, the defendant shall allege in his answer that before the commencement thereof he tendered to the plaintiff a certain amount of money in full payment or satisfaction of the cause, and now brings the same into court and deposits it with the clerk for the plaintiff, if such allegation of tender is found true, and the plaintiff does not recover a greater sum than the amount so tendered, he shall not recover costs off the defendant, but the defendant shall recover them off him.

TAXATION AND COLLECTION

20.210 Taxation; statement of disbursements; objections. Costs and disbursements shall be taxed and allowed by the court or judge thereof in which the action, suit or proceeding is pending. No disbursements shall be allowed to any party unless he serves on such adverse parties as are entitled to notice by law, or rule of the court, and files with the clerk of such court within 10 days after the rendition of the judgment or decree, a statement showing with reasonable certainty the items of all disbursements, including fees of officers and the number of miles of travel and number of days' attendance claimed for each witness, if any. The statement must be verified, except as to fees of officers. Where notice to the adverse party is required, proof of service must be indorsed on or attached to the statement. A disbursement which a party is entitled to recover must be taxed whether the same has been paid or not by such party. The statement of disbursements thus filed and costs shall be entered as of course by the clerk as a part of the judgment or decree in favor of the party entitled to costs and disbursements, unless the adverse party within five days from the expiration of the time allowed to file such statement shall file his verified objections thereto, stating the particulars of such objections. Questions of law and of fact, denials of any or all of the items charged in the statement, and allegations of new matter, may be joined and included in the objections, and these shall be deemed controverted and denied by the party filing the statement without further pleading. The statement of disbursements, and the objections thereto, constitute the only pleadings required on the question, and they shall be subject to amendment like pleadings in other cases.

[Amended by 1959 c.638 §7]

20.220 Hearing and determination of objections; appeal. (1) As soon as convenient after objections are filed against a statement of disbursements, the court or judge thereof in which the action, suit or proceeding is pending shall, without a jury, proceed to hear and determine all the issues involved by the statement and objections. At such hearing the court or judge may examine any record or paper on file in the cause, and either party may produce relevant or competent testimony, orally or by deposition, or otherwise, to sustain the issues on his behalf. Either party may except to a ruling upon any question of law made at such hearing as in other cases.

(2) As soon as convenient after the hearing, the court or judge shall make and file with the clerk of the court an itemized statement of the costs and disbursements as allowed, and shall render judgment thereon accordingly for the party in whose favor allowed. No other finding or conclusion of law or fact shall be necessary, and the same shall be final and conclusive as to all questions of fact. The issues arising on the statement of disbursements and the objections thereto shall be heard and determined without either party recovering further costs or disbursements from the other, except that in the discretion of the court or judge a sum not exceeding $5 as costs, but without further disbursements, may be allowed to the party prevailing on the issues arising on the statement and objections thereto.

(3) An appeal may be taken from the decision and judgment on the allowance and taxation of costs and disbursements on questions of law only, as in other cases. On such appeal the statement of disbursements, the objections thereto, the statement of costs and disbursements as filed by the court or judge, the judgment or decree rendered thereon, and the exceptions, if any, shall constitute the trial court file, as defined in ORS 19.005.

[Amended by 1967 c.471 §2]

20.230 Collection of costs and disbursements by execution. The costs and disbursements which a party is entitled to recover from another may be collected by the execution to enforce the judgment or decree as a part thereof.

TAXATION IN THE SUPREME COURT

20.310 Taxation in Supreme Court; items taxable. When costs are allowed to the prevailing party on appeal to the Supreme Court the appearance fees, trial fees, attorney fees, as provided by law; the necessary expenses of transcript or abstract, as the law or rules require; the printing required by rule of the court, and the transcript of testimony or other proceedings, when necessarily forming part of the record on appeal, shall be taxed in the Supreme Court as costs of the appeal.

20.320 Statement of costs and disbursements; objections; fees allowed of course. No disbursements shall be allowed in the Supreme Court to any party unless he serves on the adverse party or his attorney, and files with the clerk of the court, a verified statement showing with reasonable certainty the items of all costs and disbursements in the cause. The statement shall be accompanied by proof of service thereof and shall be filed within 20 days, or such further time as may be allowed by the court, from the time an opinion is rendered, or, if no opinion is handed down, then within 20 days from the giving of a decision by the court. The total of the items included in the statement of costs and disbursements thus filed, with the exception of items or amounts not allowed by law or by rules of the Supreme Court, shall be entered by the clerk as a part of the judgment or decree, in favor of the party entitled thereto, unless the adverse party within five days from date of service of such statement shall serve and file his verified objections thereto. Appearance fees, trial fees and attorney fees shall be allowed as a matter of course to the party entitled thereto, without the filing of a statement of disbursements.

20.330 Costs and disbursements in cases of original jurisdiction. Litigants shall recover their costs and disbursements in cases of original jurisdiction in the Supreme Court, the same as provided in cases on appeal.

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Robert W. Lundy, 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 December 1, 1967.

Robert W. Lundy
Legislative Counsel