Chapter 52

1971 REPLACEMENT PART

Procedure in Ordinary Actions

IN GENERAL

52.010 Actions commenced and prosecuted, and judgments enforced as in circuit court; prevailing party entitled to disbursements
52.020 Mode of proceeding and rules of evidence the same as in circuit courts
52.030 Court rules and procedures governing certain matters like those in circuit courts
52.035 Dismissal of civil cases for want of prosecution
52.040 Contempts in justices' courts
52.050 Punishment of contempt
52.060 Persons entitled to act as attorneys

SUMMONS

52.110 When summons may be served; form, contents and requisites of summons
52.120 By whom summons served; compensation
52.130 Appointment of persons to serve process
52.140 Manner of service; return and proof of service
52.150 Service by publication
52.160 Personal service of summons outside state
52.170 When undertaking for disbursements may be required
52.180 Form of undertaking; qualifications and justification of sureties; deposit in lieu of undertaking; dismissal for want of undertaking or deposit

PROVISIONAL REMEDIES

52.210 Plaintiff entitled to provisional remedies as in the circuit courts
52.220 Proceedings in provisional remedies conducted as in circuit court
52.230 Civil arrest and bail
52.240 Discharge of defendant from arrest
52.250 Attachment of real property prohibited
52.260 Justification of sureties

PLEADINGS

52.310 Pleadings governed by statutes applicable to pleadings in circuit courts
52.320 Counterclaim exceeding jurisdiction; transfer to circuit court; time allowed plaintiff to plead; costs; effect of failure to tender costs

TRIAL FEES

52.410 Necessity that parties pay trial fee; amount of trial fee
52.420 Trial fee payable in advance; effect of failure to pay on demand for jury; recovery of fee as disbursement
52.430 State or county exempted from prepaying trial fee; recovery of the trial fee
52.440 Accounting for and disposition of the trial fee

TRIAL AND JUDGMENT

52.510 Postponement of trial
52.520 Depositions of witnesses present as condition to postponement
52.530 Change of place of trial
52.540 Who to pay disbursements for change of venue; no necessity for additional subpenas to witnesses
52.550 When change of venue deemed complete
52.560 Jurisdiction to cease when title to realty in question; further proceedings in circuit court
52.570 Right to and demand for jury; deposit of trial fee as condition
52.580 Judgment
52.590 Judgment not to determine or affect title to real property

ENFORCEMENT AND SET-OFF OF JUDGMENTS; EXECUTIONS

52.610 Enforcement, by one justice, of judgment given by another
52.620 Filing transcript of judgment in another county; issuance of execution
52.630 Lien created by filing and docketing transcript of judgment in circuit court; contents of transcript; filing fee
52.640 Set-off of judgment; application and notice
52.650 Right of appeal precludes set-off; procedure to set off judgment of another court
52.660 Enforcement of judgment proposed as set-off stayed, when
52.670 Allowance of set-off if judgments mutual
52.680 Allowance of set-off if judgments are in different amounts; disallowance of set-off
52.690 Execution not to be issued against or levied on real property; enforcement of judgment when docketed in circuit court
52.700 When execution returnable; to whom directed; duty of officer to execute writ
52.710 Renewal of execution; indorsement and entry of renewal

CROSS REFERENCES

Juvenile court proceeding, 419.472 to 419.618
Militia, immunity from civil arrest, 399.225
Municipal or recorder's court, disqualification of judge for prejudice, 221.348
Proceedings and judgments in criminal actions, Ch. 156

52.010

Amount of costs, 20.070
Costs and disbursements, Ch. 20
Small claims department, Ch. 55

52.030

Juries in justice courts, Ch. 54

52.110

Summons in forcible entry and detainer action, 105.135

52.150

Time and manner of publication, 15.140

52.170

Deposits in lieu of bond, Ch. 22

52.210

Indemnity bond to sheriff or constable, 23.310

52.230

Deposits in lieu of bail, Ch. 22

52.260

Justification of bail, 29.590
Notice of justification of bail, 29.580

52.410

Trial fees in justice court in criminal actions, 156.150

52.430

State, county or city not required to advance any fees taxable as costs or disbursements, 20.140

52.510

Postponement for jury trial, 54.020

52.530

Changing place of trial generally, 14.110

52.560

Jurisdiction of justices not to extend to cases involving title to realty, 51.090

52.580

Time for decision on submitted questions, 1.050

52.590

Jurisdiction of justices not to extend to title to realty, 51.090

52.700

Recall of execution when proceedings stayed by appeal, 53.060

IN GENERAL

52.010 Actions commenced and prosecuted, and judgments enforced as in circuit court; prevailing party entitled to disbursements. (1) Actions at law in justices' courts shall be commenced and prosecuted to final determination and judgment enforced therein, in the manner provided for similar actions in the circuit courts, except as in this chapter otherwise provided.

(2) All disbursements shall in all cases be allowed the prevailing party.

52.020 Mode of proceeding and rules of evidence the same as in circuit courts. The mode of proceeding and the rules of evidence are the same in a justice's court as in a like action or proceeding in the circuit courts, except where otherwise specially provided.

52.030 Court rules and procedures governing certain matters like those in circuit courts. The rules in justices' courts governing mistakes in pleadings and amendments thereof, vacating defaults and judgments for mistake, inadvertence, surprise or excusable neglect, the formation of issues of both law and fact, the postponing of trials for cause shown, the mode of trial, the formation of the jury, the conduct and manner of trial by jury or by the justice without a jury, the procedure regarding the verdict and judgment and the enforcement thereof by execution shall be as prescribed for civil actions in the circuit courts, except as otherwise provided.

52.035 Dismissal of civil cases for want of prosecution. The justice of the peace of every justice court shall mail a notice to each of the attorneys of record, or, to the plaintiff where there is no licensed attorney representing the plaintiff, in every pending civil action, suit or proceeding in their respective courts in which no proceedings have been had or papers filed for a period of more than one year. The notice shall state that each such case will be dismissed by the court for want of prosecution 60 days from the date of mailing the notice, unless, on or before the expiration of the 60 days, application, either oral or written, be 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 is not shown, the court shall dismiss each such case. Nothing contained herein shall be construed to prevent the dismissing at any time, for want of prosecution, of any suit, action or proceeding upon motion of any party thereto.
[1953 c.360 §1]

52.040 Contempts in justices' courts. ORS 33.010 to 33.110 and 33.130 to 33.150, defining contempts, and the proceeding for punishing a party guilty of a contempt, shall apply to justices' courts, except as otherwise specially provided in ORS 52.050.

52.050 Punishment of contempt. The punishment for a contempt in a justice's court shall be by fine or imprisonment, or both, but such fine shall in no case exceed $25, nor the imprisonment 10 days.

52.060 Persons entitled to act as attorneys. Any person may act as attorney for another in a justice's court, except a person or officer serving any process in the action or proceeding, other than a subpena.

SUMMONS

52.110 When summons may be served; form, contents and requisites of summons. At any time after the action is commenced by the filing of a complaint with the justice of the peace, the plaintiff may cause a summons to be served on the defendant. It shall be subscribed by the plaintiff or his attorney or the justice of the peace. It shall specify the name of the court in which the complaint is filed and shall contain the title of the cause specifying the names of the parties to the action, plaintiff and defendant. It shall be directed to the defendant and shall require him to appear and answer the complaint within seven days from the date of the service of the summons upon him or, in case of failure to so appear and answer, the plaintiff will take judgment against him for the money, property or other relief demanded in the complaint, with costs and disbursements of the action.

52.120 By whom summons served; compensation. (1) The summons shall be served by the sheriff of the county or his deputy, or any constable of the county or his deputy, or may be served by any competent person over the age of 21 years who is a resident of the State of Oregon and is not a party to or an attorney in the action.

(2) Compensation to such person serving

the summons shall be as prescribed by subsection (2) of ORS 15.060.
[Amended by 1953 c.479 §4]

52.130 Appointment of persons to serve process. Whenever it appears to the justice that any process or order authorized to be issued or made will not be served for want of an officer, the justice may appoint any suitable person not a party to the action, to serve it. Such an appointment may be made by an indorsement on the process or order, in substantially the following form and signed by the justice with his name of office: "I hereby appoint A B to serve the within process or order," as the case may be.

52.140 Manner of service; return and proof of service. The summons shall be served by delivering a copy thereof, together with a copy of the complaint certified to be correct by the plaintiff, his agent or attorney or the justice, to the defendant in the manner provided for the service of summons in civil actions in the circuit courts. The summons shall be returned to the justice by whom it was issued by the person serving it, with the proof of such service, or that the defendant cannot be found. In case a person other than an officer makes such service, such person shall make an affidavit of service in the same manner as provided in ORS 15.110, or that the defendant cannot be found.
[Amended by 1953 c.479 §4]

52.150 Service by publication. The provisions of ORS 15.120 which provide for service of summons by publication are applicable to proceedings in justices' courts.

52.160 Personal service of summons outside state. The provisions of ORS 15.110 which provide for personal service of summons outside the state are applicable to proceedings in justices' courts.

52.170 When undertaking for disbursements may be required. If the plaintiff is a nonresident of this state, the justice may require him to give an undertaking with one or more sureties for the disbursements of the action before issuing the summons; and if at any time before the commencement of the trial the defendant applies therefor, the justice must require such plaintiff to give the undertaking. If the plaintiff is a resident of this state, the justice may, in his discretion, upon a like application on the part of the defendant, require the plaintiff to give such undertaking. However, if the plaintiff is a resident of Oregon and makes his affidavit that he is unable to furnish the undertaking as required by this section, the giving of such undertaking shall be waived.

52.180 Form of undertaking; qualifications and justification of sureties; deposit in lieu of undertaking; dismissal for want of undertaking or deposit. The undertaking may be substantially in the following form: "I, A B," or "We, A B and C D, undertake to pay E F, the defendant in this action, all disbursements that may be adjudged to him in this action." The sureties must possess the qualifications of bail upon arrest, and, if required by the defendant, must justify in a sum not less than $50. A deposit with the justice of such sum as he may deem sufficient shall be equivalent to giving the required undertaking. If the undertaking or deposit in lieu thereof is not given or made by the time the action is at issue and ready for trial on a question of fact, the justice must dismiss the action as for want of prosecution.

PROVISIONAL REMEDIES

52.210 Plaintiff entitled to provisional remedies as in the circuit courts. In a civil action in a justice's court the plaintiff is entitled to the benefit of the provisional remedies of arrest, attachment, and delivery of personal property claimed in the action, as in like cases in the circuit courts. All affidavits, orders and undertakings for these remedies are to be taken or made and filed with the justice, and the process is to be issued by and made returnable before him. A writ of arrest, of attachment, or an order for the delivery of personal property claimed in the action, may be served and executed by any person authorized to serve a summons.

52.220 Proceedings in provisional remedies conducted as in circuit court. The provisions for proceedings in the circuit courts on attachment, arrest, and delivery of personal property shall govern in like cases in justices' courts.

52.230 Civil arrest and bail. A defendant who has been arrested in a civil action must, if he requires it, be at once taken before the justice who issued the writ, for the purpose of giving bail. If he does not so require, the officer making the arrest shall keep him in his custody and take him before

the justice on the day and at the hour the defendant is required to appear and answer.

52.240 Discharge of defendant from arrest. When the defendant is in custody upon a writ of arrest in a civil action, a postponement of the trial granted upon the application of the plaintiff for a longer period than one day discharges the defendant from arrest. In such case the justice must indorse upon the writ of arrest, "The defendant is discharged from custody upon the within process," and sign the same with his name and office.

52.250 Attachment of real property prohibited. Real property or any interest therein cannot be attached upon a writ of attachment in a civil action in a justice's court.

52.260 Justification of sureties. Whenever the sureties in an undertaking given in a provisional remedy by either party are required to justify, the justification shall be made before the justice in whose court the action is pending, and upon the notice prescribed by statute, or upon a shorter notice to be prescribed by the order of the justice.

PLEADINGS

52.310 Pleadings governed by statutes applicable to pleadings in circuit courts. The pleadings in actions in justices' courts, the forms thereof and the rules by which the sufficiency of the pleadings are to be determined, shall be those prescribed for civil actions in the circuit courts.

52.320 Counterclaim exceeding jurisdiction; transfer to circuit court; time allowed plaintiff to plead; costs; effect of failure to tender costs. In all actions instituted in a justice's court a defendant shall have the right to plead a counterclaim in excess of the jurisdiction of the court, whereupon the justice of the peace shall, within 10 days following the filing of the answer, file with the clerk of the circuit court for the county in which the justice's court is located, a transcript of the cause containing a copy of all the material entries in the justice's docket, together with all the original papers relating to the cause. Upon the filing of the transcript with the clerk of the circuit court, the justice of the peace shall proceed no further in the cause, but the cause shall thenceforth be considered as transferred to the circuit court and be deemed pending and for trial therein as if originally commenced in the court. The circuit court shall have jurisdiction of the cause and shall proceed to hear, determine and try the same. In the event of the justice's failure to file the transcript in the circuit court within the time specified, the judge of the circuit court may make an order upon the justice to comply within a specified time with the provisions of this section. The plaintiff in the action shall have 10 days after the filing of the transcript in the circuit court in which to move against, demur or reply to defendant's answer. All costs incurred in the transfer of the case, including the fee for filing the same in the circuit court, shall be borne by the defendant and must be tendered by the defendant to the justice of the peace at the time of filing with the justice the counterclaim, and the costs may be recovered by the defendant in the event he prevails. On failure of the defendant to pay to the justice of the peace the required fee at the time of filing the counterclaim, or within two days thereafter, the justice of the peace shall disregard the counterclaim of the defendant and proceed to try the cause as though the counterclaim had never been filed.

TRIAL FEES

52.410 Necessity that parties pay trial fee; amount of trial fee. (1) Parties to judicial proceedings in justices' courts are required to contribute toward the expense of maintaining justices' courts, or a particular action or proceeding therein, by the payment of a trial fee.

(2) The trial fee in a justice's court, for every trial by jury, is $6.

52.420 Trial fee payable in advance; effect of failure to pay on demand for jury; recovery of fee as disbursement. (1) The trial fee in a justice's court shall be paid to the justice upon the demand for a jury, and unless so paid the demand shall be disregarded and the trial proceed as if no demand had been made.

(2) If the party paying the fee prevails in the action or proceeding so as to be entitled to recover costs therein, the fee shall

be allowed and taxed as a disbursement and collected off the adverse party.

52.430 State or county exempted from prepaying trial fee; recovery of the trial fee. When the state or any county is a party to a judicial proceeding in a justice's court, it need not pay the trial fee upon demanding a jury, and if it is entitled to recover costs therein, the trial fee shall be allowed and taxed in its favor as a disbursement, and collected off the adverse party as in ordinary cases.

52.440 Accounting for and disposition of the trial fee. In a justice's court, the trial fee is paid to the justice. He shall keep an account of such fees, and by whom paid, and distribute the amount among the jury in the particular case, in partial payment of their legal fees.

TRIAL AND JUDGMENT

52.510 Postponement of trial. When a cause is at issue upon a question of fact, the justice must, upon sufficient cause shown on the application of either party, postpone the trial for a period not exceeding 60 days.

52.520 Depositions of witnesses present as condition to postponement. An application for the postponement of the trial shall not be granted unless the party applying therefor, if required by the adverse party, consents to take the deposition of any witness of the adverse party then in attendance upon the court. If the consent is given, the justice shall take the deposition, and it may be read on the trial, subject to the same objection as if the witness were present and gave the testimony orally.

52.530 Change of place of trial. (1) The justice shall change the place of trial, on motion of either party to the action, when it appears from a supporting affidavit of the party that:

(a) The justice is a party to or directly interested in the event of the action, or connected by consanguinity or affinity within the third degree with the adverse party or those for whom he prosecutes or defends; or

(b) The justice is so prejudiced against the party making the motion that he cannot expect an impartial trial before the justice.

(2) The justice may change the place of trial, on motion of either party to the action, when it appears from a supporting affidavit of the party that the convenience of parties and witnesses would be promoted by the change, and that the motion is not made for the purpose of delay.

(3) The motion for change of place of trial cannot be made or allowed in any action until after the cause is at issue on a question of fact. The change shall be made to the nearest justice court in the county. If there be only one justice court in the county the change shall be made to the nearest district court in the county. Neither party shall be entitled to more than one change in the place of trial, except for causes not in existence when the first change was allowed. When the place of trial has been changed, the justice shall forthwith transmit to the justice court or district court to whom the case is transferred a transcript of the proceedings had in the case with all the original papers filed thereon. All costs incurred in the transfer of such case, including the fee for filing the same in the court to which the case is transferred shall be borne by the party requesting the change and must be tendered by him to the justice at the time of filing the motion for the change. Such costs may be recovered by such party in the event he prevails in the trial of the action. On the failure of the party to tender or pay the required fee at the time the motion is filed the justice shall disregard the motion and proceed to try the action as though no motion had been filed. [Amended by 1959 c.159 §1]

52.540 Who to pay disbursements for change of venue; no necessity for additional subpenas to witnesses. (1) The disbursements of the change of venue shall be paid by the party applying therefor, and not taxed as a part of the costs in the case.

(2) It shall not be necessary to issue new subpenas to witnesses, but the witnesses shall appear before the justice before whom the cause has been transferred without the issue of any other notice than the allowance of the motion for the change of venue.

52.550 When change of venue deemed complete. Upon the filing of the transcript and papers with the justice to whom the cause has been transferred, the change of venue shall be deemed complete, and thereafter the action shall proceed as though it had been commenced before such justice.

52.560 Jurisdiction to cease when title to realty in question; further proceedings in circuit court. If it appears on the trial of any cause before a justice of the peace from the evidence of either party, or from the pleadings, that the title to real property is in question, which title is disputed by the other party, the justice shall immediately make an entry thereof in his docket and cease all further proceedings in the cause. He shall certify and return to the circuit court of the county a transcript of all the entries made in his docket relating to the case, together with all the process and other papers relating to the action, in the same manner and within the same time as upon an appeal. Thereupon the circuit court shall proceed in the cause to final judgment and execution in the same manner as if the action had been originally commenced therein, and disbursements shall abide the event of the action.

52.570 Right to and demand for jury; deposit of trial fee as condition. When a cause is at issue upon a question of fact, if either party then demands a jury trial and deposits with the justice such trial fee as is required to be paid in advance by ORS 52.420 and 52.430, the issue must be tried by a jury and not the justice; but otherwise it must be tried by the justice.

52.580 Judgment. When an issue of fact is tried by the justice, it is not necessary that there be any special statement of the facts found or law determined on the trial. It is sufficient for the justice to give judgment generally, as the law and evidence may require, for the plaintiff or the defendant, stating therein for what amount or what relief or to what effect the same is given.

52.590 Judgment not to determine or affect title to real property. Although the title to real property may be controverted or questioned in an action in a justice's court, the judgment in the action shall in no way affect or determine the title as between the parties, or otherwise.

ENFORCEMENT AND SET-OFF OF JUDGMENTS; EXECUTIONS

52.610 Enforcement, by one justice, of judgment given by another. A justice of the peace has authority and power to enforce a judgment given by his predecessor in office, or by a justice whose docket has been transferred to him, and to complete any unfinished business begun before such predecessor, or entered in such docket, as if the same had been given or begun before himself.

52.620 Filing transcript of judgment in another county; issuance of execution. The party entitled to the benefit of a judgment in a justice's court may at any time have a certified transcript of the judgment and file it with any justice in any other county. Upon the filing of the transcript, the justice with whom it is filed must make an entry thereof in his docket, giving the title of the cause, the names of the parties and the substance of the judgment. Thereafter execution may issue to enforce the judgment, or any part thereof remaining unsatisfied, as if it had been given by the justice with whom the transcript is filed.

52.630 Lien created by filing and docketing transcript of judgment in circuit court; contents of transcript; filing fee. Whenever a judgment is given in a justice's court in favor of anyone for the sum of $10 or more, exclusive of costs or disbursements, the party in whose favor the judgment is given may at any time thereafter, while the judgment is enforceable, file a certified transcript thereof with the county clerk of the county wherein the judgment is given. Thereupon the clerk shall immediately docket the same in the judgment docket of the circuit court. The transcript shall consist of a copy of all the docket entries made in the case and the judgment as extended by the justice, certified to be a true and correct transcript from the original entries by the justice. From the time of docketing a judgment of the justice's court as provided in this section, the same shall be a lien upon the real property of the defendant as if it were a judgment of the circuit court where it is docketed. The docketing of the certified transcript shall not thereby extend the lien of the judgment more than 10 years from the original entry of the judgment in the justice's court. The fee for filing each transcript shall be $2, which shall be paid before the transcript is filed.

[Amended by 1965 c.619 §27; 1971 c.621 §11]

52.640 Set-off of judgment; application and notice. A party against whom a judgment is given in a justice's court may, upon three days' notice to the adverse party, apply to the justice of the court to have

another judgment given in a justice's court, between the same parties and against the adverse party, set off against the first mentioned judgment.

52.650 Right of appeal precludes set-off; procedure to set off judgment of another court. There must be no existing right of appeal from the judgment proposed as a set-off; and, if the judgment was given in another court than the one where the application is made, the party proposing the set-off must produce the transcript of the judgment, certified by the proper justice, which certificate shall also state how much of the judgment remains unsatisfied and that the transcript is given for the purpose of being a set-off against the judgment to which it is proposed as a set-off.

52.660 Enforcement of judgment proposed as set-off stayed, when. The justice making the transcript and certificate shall make an entry thereof in his docket and thereafter all proceedings to enforce the judgment shall be stayed, unless the transcript is returned with the certificate of the proper justice indorsed thereon, to the effect that it has not been allowed to be set off.

52.670 Allowance of set-off if judgments mutual. If upon the hearing of the application the justice finds that the judgments are mutual, he shall give judgment allowing the proposed set-off.

52.680 Allowance of set-off if judgments are in different amounts; disallowance of set-off. If there is any difference in the amount of the two judgments, judgment for the difference must be given in favor of the party owning the larger judgment. If the justice refuses to allow the set-off, he shall so certify on the transcript and return it to the party.

52.690 Execution not to be issued against or levied on real property; enforcement of judgment when docketed in circuit court. Execution to enforce a judgment in a justice's court must not be issued against or levied upon the real property of the defendant; but when a judgment given by a justice has been duly docketed in the circuit court, thereafter it must be enforced as a judgment of such circuit court.

52.700 When execution returnable; to whom directed; duty of officer to execute writ. An execution issued by a justice must be made returnable within 30 days from the date thereof, and may be directed to the sheriff of the county, or any constable or marshal or policeman authorized to act as a constable therein, and must be executed by any one of such officers when delivered to him.

52.710 Renewal of execution; indorsement and entry of renewal. At any time before the expiration of the return day of the execution, it may be renewed for another period of 30 days, at the request of the plaintiff, by an indorsement to that effect made thereon by the justice. The indorsement must be dated and, if any part of the execution has been satisfied, must state the amount then due thereon. An entry of the renewal must also be made in the docket of the justice.

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, 1971.

Robert W. Lundy
Legislative Counsel