

# Chapter 53

## 1985 REPLACEMENT PART

(1987 reprint)

### Appeals in Civil Actions

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#### CROSS REFERENCES

Enforcement of duties relating to administration of justice, 1 025

Supervisory control and appellate jurisdiction of circuit court over inferior courts, Const Art. VII (O), §9

#### **53.010**

Appeals from small claims department, 55.110

#### **53.030**

Deposits in lieu of bail or bond, Ch. 22

State or other public corporation not required to advance costs or give bond, 20 140, 22.010

#### **53.090**

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

#### **53.125**

Action by appellate 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. [Amended by 1977 c.365 §4; 1977 c.416 §4]

**53.020 Court to which appeal lies; designation of parties.** An appeal is taken to the district court for the county wherein the judgment is given. If there is no district court for the county, the appeal shall be taken to the circuit court for the county. 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. [Amended by 1985 c 342 §8]

**53.030 Manner of taking appeal; notice; undertaking for costs and disbursements.** An appeal is taken by serving, within 30 days after rendition of judgment, a written notice thereof on the adverse party, or the attorney of the adverse party, 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 the attorney of the respondent, indorsed on the notice of appeal, shall be sufficient proof of service. When the notice of appeal has been served and filed, the appellate court shall have jurisdiction of the cause. [Amended by 1973 c 477 §1]

**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 the appellant 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 the appellant 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. The justice may waive, reduce or limit the undertaking upon a showing of good cause, including indigency, and on such terms as shall be just and equitable. The justice or the appellate court may waive a failure to file the undertaking within the time required upon a showing of good cause for that failure. [Amended by 1983 c 673 §12]

**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 the docket of the justice, 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. [Amended by 1981 c 898 §43]

**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 the respondent 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 the respondent 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.** Within 30 days next following the allowance of the appeal, the appellant must cause to be filed with the clerk of the appellate 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 appellate 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 appellate court within the time provided, the appellate 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. However, such order shall be made within the time allowed to file the transcript. [Amended by 1985 c 342 §9]

**53.100 Amendment of pleadings in appellate 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 the undertaking of the appellant, 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 decision of the appellate court. [1959 c 558 §47; 1981 c 178 §4]

**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.