Chapter 52

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Civil Actions

GENERAL PROVISIONS

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

52.030 Court rules and procedures

52.035 Dismissal of civil cases for want of prosecution

52.040 Contempt in justice court

52.060 Persons entitled to act as attorneys in justice court

SUMMONS

52.110 Service; form, contents and requisites of summons

52.120 Persons authorized to serve summons; compensation; manner of service

52.130 Appointment of persons to serve process or order

52.170 Security for disbursements

52.180 Form of undertaking; qualifications and justification of sureties; deposit in lieu of undertaking

ATTACHMENT

52.210 Plaintiff entitled to attachment as in circuit court

52.220 Attachment proceedings conducted as in circuit court

52.250 Attachment of real property prohibited

PLEADINGS

52.310 Pleadings governed by rules applicable to pleadings in circuit court

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 Trial fee

52.420 Trial fee payable in advance; effect of failure to pay; recovery of fee as disbursement

52.430 State or county exempted from prepaying trial fee; recovery of trial fee

52.440 Accounting for and disposition of trial fee

TRIAL AND JUDGMENT

52.510 Postponement of trial

52.520 Depositions of witnesses as condition to postponement

52.530 Change of place of trial

52.540 Payment of disbursements for change of venue; subpoenaed witnesses

52.550 When change of venue deemed complete

52.560 Jurisdiction to cease when title to real property in question; further proceedings in circuit court

52.570 Right to jury trial

52.580 Judgment

52.590 Judgment may not determine or affect title to real property

ENFORCEMENT AND SETOFF OF JUDGMENTS; EXECUTIONS

52.600 Enforcement of justice court judgments generally

52.610 Enforcement of judgment given by other justice

52.620 Filing transcript of judgment in another county; issuance of execution

52.635 Liens based on justice court judgment

52.640 Setoff of judgment; application and notice

52.650 Right of appeal precludes setoff; procedure to set off judgment of another court

52.660 Enforcement of setoff judgment stayed

52.670 Setoff of mutual judgments

52.680 Setoff of judgments in different amounts; disallowance of setoff

52.700 Return on execution; to whom directed; duty of officer to execute writ

52.710 Renewal of execution; indorsement and entry of renewal

GENERAL PROVISIONS

52.010 Actions commenced and prosecuted, and judgments enforced, as in circuit court; prevailing party entitled to disbursements. (1) Actions at law in justice 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 mode of proceeding and the rules of evidence are the same in a justice court as in a like action or proceeding in the circuit courts, except where otherwise specially provided.

52.030 Court rules and procedures. The rules in justice 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 Contempt in justice court. ORS 33.015 to 33.155, defining acts that constitute contempt and the proceedings for imposing sanctions for contempt, apply to justice courts. [Amended by 1991 c.724 §20; 1999 c.605 §4; 2005 c.22 §34]

52.050 [Repealed by 1999 c.605 §8]

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

SUMMONS

52.110 Service; form, contents and requisites of summons. (1) 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 plaintiff's 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 the defendant to appear and defend within the time required by ORCP 7 C(2) or, in case of failure to so appear and defend, the plaintiff will take judgment against the defendant for the money, property or other relief demanded in the complaint, with costs and disbursements of the action.

(2) A summons shall contain a notice printed in type size equal to at least 8-point type which may be substantially in the following form:

NOTICE TO DEFENDANT:
READ THESE PAPERS
CAREFULLY!

You must "appear" in this case or the other side will win automatically. To "appear" you must file with the court a legal paper called a "motion" or "answer." The "motion" or "answer" must be given to the justice of the peace within 30 days along with the required filing fee. It must be in proper form and have proof of service on the plaintiff's attorney or, if the plaintiff does not have an attorney, proof of service on the plaintiff.

If you have questions, you should see an attorney immediately.

[Amended by 1983 c.673 §10]

52.120 Persons authorized to serve summons; compensation; manner of service. (1) The summons in an action in a justice court shall be served by a person authorized to serve summons, who shall be compensated for service of the summons, as provided for the service of summons in civil action in a circuit court.

(2) The summons shall be served in the manner provided for the service of summons in a civil action in a circuit court. The summons shall be returned to the justice by whom it was issued by the person serving it, with proof of service or that the defendant cannot be found. [Amended by 1953 c.749 §4; 1973 c.827 §10; 1977 c.877 §11; 1979 c.284 §84]

52.130 Appointment of persons to serve process or order. 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 other person authorized by ORS 52.120, 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 the name of the office of the justice:

I hereby appoint A B to serve the within process or order.

[Amended by 1977 c.877 §12; 1979 c.284 §85; 1995 c.79 §13]

52.140 [Amended by 1953 c.479 §4; 1977 c.877 §13; repealed by 1979 c.284 §199]

52.150 [Repealed by 1979 c.284 §199]

52.160 [Repealed by 1979 c.284 §199]

52.170 Security for disbursements. If the plaintiff is a nonresident of this state, the justice may require the plaintiff to give an undertaking with one or more sureties, or an irrevocable letter of credit issued by an insured institution, as defined in ORS 706.008, 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 or irrevocable letter of credit. If the plaintiff is a resident of this state, the justice may, in the discretion of the justice, upon a like application on the part of the defendant, require the plaintiff to give such undertaking or irrevocable letter of credit. However, if the plaintiff is a resident of Oregon and makes the affidavit that the plaintiff is unable to furnish the undertaking or irrevocable letter of credit as required by this section, the giving of such undertaking or irrevocable letter of credit shall be waived. [Amended by 1991 c.331 §14; 1997 c.631 §374]

52.180 Form of undertaking; qualifications and justification of sureties; deposit in lieu of undertaking. (1) 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 E F in this action."

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(2) 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 the justice 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. [Amended by 1995 c.79 §14]

ATTACHMENT

52.210 Plaintiff entitled to attachment as in circuit court. In a civil action in a justice court the plaintiff is entitled to the benefit of the provisional remedies of 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 the justice. A writ 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. [Amended by 1981 c.898 §41]

52.220 Attachment proceedings conducted as in circuit court. The provisions for proceedings in the circuit courts on attachment and delivery of personal property shall govern in like cases in justice courts, except as otherwise provided. [Amended by 1981 c.898 §42]

52.230 [Repealed by 1981 c.898 §53]

52.240 [Repealed by 1981 c.898 §53]

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 court.

52.260 [Repealed by 1981 c.898 §53]

PLEADINGS

52.310 Pleadings governed by rules applicable to pleadings in circuit court. The pleadings in actions in justice 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 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 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 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 the defendant 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. [Amended by 1979 c.284 §86]

TRIAL FEES

52.410 Trial fee. (1) Parties to judicial proceedings in justice courts are required to contribute toward the expense of maintaining justice courts, or a particular action or proceeding therein, by the payment of a trial fee.

(2) The trial fee in a justice court, for every trial by jury, is $17. [Amended by 1979 c.447 §3; 1997 c.801 §133]

52.420 Trial fee payable in advance; effect of failure to pay; recovery of fee as disbursement. (1) The trial fee in a justice 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 from the adverse party. [Amended by 2005 c.22 §35]

52.430 State or county exempted from prepaying trial fee; recovery of trial fee. When the state or any county is a party to a judicial proceeding in a justice court, the state or county need not pay the trial fee upon demanding a jury, and if the state or county is entitled to recover costs therein, the trial fee shall be allowed and taxed in the state's or county's favor as a disbursement, and collected from the adverse party as in ordinary cases. [Amended by 2005 c.22 §36]

52.440 Accounting for and disposition of trial fee. In a justice court, the trial fee is paid to the justice. The justice 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 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 the justice prosecutes or defends; or

(b) The justice is so prejudiced against the party making the motion that the party 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 is only one justice court in the county the change shall be made to the circuit court for the county in which the justice court is located. 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 circuit 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 the party to the justice at the time of filing the motion for the change. Such costs may be recovered by such party in the event the party 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; 1995 c.658 §63; 2005 c.22 §37]

52.540 Payment of disbursements for change of venue; subpoenaed 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 subpoenas 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 real property 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 the docket of the justice and cease all further proceedings in the cause. The justice shall certify and return to the circuit court of the county a transcript of all the entries made in the docket of the justice 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 jury trial. 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 may not determine or affect title to real property. Although the title to real property may be controverted or questioned in an action in a justice court, the judgment in the action shall in no way affect or determine the title as between the parties, or otherwise.

ENFORCEMENT AND SETOFF OF JUDGMENTS; EXECUTIONS

52.600 Enforcement of justice court judgments generally. (1) Upon the docketing of a judgment by a justice court, the judgment may be enforced by the justice court in the manner provided in this section.

(2) Enforcement proceedings on a judgment docketed by a justice court may include:

(a) Writ of execution proceedings for personal property under ORS 18.252 to 18.993.

(b) Proceedings in support of execution under ORS 18.265, 18.268 and 18.270.

(c) Garnishment proceedings under ORS 18.600 to 18.850.

(3) In addition to the enforcement proceedings specified in subsection (2) of this section, a docketed justice court judgment may be enforced by the court that rendered the judgment through the issuance of a writ

of execution on real property under ORS 18.252 to 18.993. A writ of execution on real property may be issued by a justice court only after the judgment has been transcribed or recorded in the manner provided by ORS 52.635.

(4) ORS 18.038, 18.042, 18.048 and 137.071 apply to judgments rendered in justice courts.

(5) Except as provided in subsection (6) of this section, the provisions of this section apply to all judgments docketed by justice courts, including judgments imposed in violation proceedings and other criminal proceedings.

(6) The provisions of this section and ORS 52.635 do not apply to proceedings for enforcement of ordinances governing the parking of vehicles. Ordinances governing the parking of vehicles shall be enforced as provided by other law. [1999 c.788 §2; 2001 c.249 §74; 2003 c.576 §95]

52.610 Enforcement of judgment given by other justice. A justice of the peace has authority and power to enforce a judgment given by the predecessor in office, or by a justice whose docket has been transferred to the justice of the peace, 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 the justice of the peace.

52.620 Filing transcript of judgment in another county; issuance of execution. The party entitled to the benefit of a judgment in a justice 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 the docket of the justice, 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 [Amended by 1965 c.619 §27; 1971 c.621 §11; 1975 c.607 §13; 1979 c.833 §14; 1981 c.835 §4; 1983 c.696 §6; 1987 c.586 §20; 1995 c.273 §15; repealed by 1999 c.788 §3 (52.635 enacted in lieu of 52.630)]

52.635 Liens based on justice court judgment. (1) After a judgment that includes a money award is docketed in a justice court, a certified copy of the judgment or a lien record abstract for the judgment may be recorded in the County Clerk Lien Record for the county that contains the justice court that rendered the judgment. The certified copy or lien record abstract may be recorded by the judgment creditor or by the agent of the judgment creditor at any time after the judgment is rendered and before the judgment expires under ORS 18.194 or is fully satisfied. From the time the certified copy of the judgment or the lien record abstract is recorded in the County Clerk Lien Record, the judgment is a lien upon the real property of the defendant in the county.

(2) In lieu of recording a certified copy of a judgment or a lien record abstract for a judgment under subsection (1) of this section, a judgment that includes a money award rendered by a justice court in a civil action may be transcribed to the circuit court for the county that contains the justice court that rendered the judgment. The judgment may be transcribed by the filing of a certified transcript of the judgment with the clerk of the circuit court. The transcript must contain a copy of all the docket entries made in the case and the judgment as rendered by the justice court, certified to be a true and correct transcript from the original entries by the justice court. Upon filing of the certified transcript, the clerk shall enter the transcribed judgment in the register of the circuit court and in the judgment lien record. The clerk shall note in the register that the transcribed judgment creates a judgment lien. A judgment in a criminal action may not be transcribed to circuit court under the provisions of this subsection.

(3) A certified copy of a judgment docketed in a justice court, or a lien record abstract for the judgment, may be recorded in any County Clerk Lien Record. The judgment or lien record abstract may be recorded in a county other than the county that contains the justice court that rendered the judgment without transcribing the justice court judgment to the circuit court for the county that contains the justice court that rendered the judgment, or recording a certified copy of the judgment or a lien record abstract for the judgment in the County Clerk Lien Record for the county that contains the justice court. If the judgment has been transcribed to circuit court, or a certified copy of the judgment or a lien record abstract for the judgment has been recorded in any County Clerk Lien Record, a lien record abstract for the judgment in the form provided by ORS 18.170 may be recorded in the County Clerk Lien Record for any other county. From the time the certified copy of the judgment or lien record abstract for the judgment is recorded in the County Clerk Lien Record of another county, the judgment is a lien upon the real property of the defendant in that county.

(4) A certified copy of a certificate of extension filed under ORS 18.194, or a lien record abstract for the certificate of extension, may be transcribed to circuit court or recorded in a County Clerk Lien Record in the

same manner as provided for judgments under this section and with like effect.

(5) The transcribing of a justice court judgment to circuit court under this section, or the recording of a certified copy of a justice court judgment or a lien record abstract under this section, does not extend the lien of the judgment more than 10 years from the original entry of the judgment in the justice court.

(6) The fee for filing a transcript with the clerk of the circuit court under subsection (2) of this section shall be as provided in ORS 21.235 (1). The fee for recording a certified copy of a justice court judgment or a lien record abstract under this section shall be as provided in ORS 205.320.

(7) A justice court and circuit court may enter into an agreement to allow for electronic transcription of justice court judgments under this section. A justice court and county clerk may enter into an agreement to allow for electronic recording of judgments and lien record abstracts under this section. [1999 c.788 §4 (enacted in lieu of 52.630); 2003 c.576 §96; 2003 c.737 §§80,81; 2007 c.339 §12; 2011 c.595 §120]

Note: Section 62 (1) and (2), chapter 788, Oregon Laws 1999, provides:

Sec. 62. (1) The repeal of ORS 52.630 by section 3 of this 1999 Act does not affect any judgment docketed in a circuit court under the provisions of ORS 52.630 (1997 Edition) before the effective date of this 1999 Act [October 23, 1999].

(2) Any judgment rendered by a justice court before the effective date of this 1999 Act that was not docketed in the circuit court under the provisions of ORS 52.630 (1997 Edition) before the effective date of this 1999 Act may become a lien on real property only in the manner provided by section 4 of this 1999 Act [52.635]. Any judgment rendered in a justice court on or after the effective date of this 1999 Act may become a lien on real property only in the manner provided by section 4 of this 1999 Act. [1999 c.788 §62(1),(2)]

52.640 Setoff of judgment; application and notice. A party against whom a judgment is given in a justice 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 court, between the same parties and against the adverse party, set off against the first mentioned judgment.

52.650 Right of appeal precludes setoff; procedure to set off judgment of another court. A judgment proposed as a setoff under ORS 52.640 must be final and no longer subject to appeal. If the judgment was given in another court than the one where the application is made, the party proposing the setoff 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 setoff against the judgment to which it is proposed as a setoff. [Amended by 2003 c.14 §23]

52.660 Enforcement of setoff judgment stayed. The justice making the transcript and certificate shall make an entry thereof in the docket of the justice 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 Setoff of mutual judgments. If upon the hearing of the application the justice finds that the judgments are mutual, the justice shall give judgment allowing the proposed setoff.

52.680 Setoff of judgments in different amounts; disallowance of setoff. 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 setoff, the justice shall so certify on the transcript and return it to the party.

52.690 [Repealed by 1999 c.788 §5]

52.700 Return on execution; 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 police officer authorized to act as a constable therein, and must be executed by any one of such officers when delivered to the officer. [Amended by 1991 c.67 §8]

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.