

Chapter 3

Circuit Courts Generally

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CASE CITATIONS: *Burnett v. Hatch*, (1954) 200 Or 291, 266 P2d 414; *Gibbs v. Multnomah County*, (1959) 219 Or 84, 346 P2d 636.

ATTY. GEN. OPINIONS: Judge as a member of Juvenile Services Advisory Committee, 1964-66, p 267.

3.011

CASE CITATIONS: *Geiser v. Myers*, (1968) 249 Or 543, 439 P2d 859.

ATTY. GEN. OPINIONS: Nomination of candidates to positions created after July 1 election year, 1966-68, p 476.

3.030

NOTES OF DECISIONS

A declaration of candidacy, for a judicial office, offered for the election preceding the biennium in which the office would possibly become vacant by mandatory retirement, was properly refused. *State ex rel. McCormick v. Appling*, (1964) 236 Or 485, 389 P2d 677.

3.041

ATTY. GEN. OPINIONS: Residence qualifications of a circuit judge, 1936-38, p 612.

3.050

ATTY. GEN. OPINIONS: Power of Secretary of State to determine eligibility of candidates for office of circuit court judge, 1954-56, p 9.

3.060

NOTES OF DECISIONS

The Secretary of State may be compelled by mandamus to audit a claim against the state and issue a warrant for salary of circuit judge fixed by statute. *Shattuck v. Kincaid*, (1897) 31 Or 379, 49 P 758.

ATTY. GEN. OPINIONS: Withholding of judge's salary fund fee in support cases, 1952-54, p 142; expenses of circuit judges sitting as pro tem judges of Supreme Court, 1956-58, p 202; payment of circuit judges travel expenses incurred in prior biennium from current biennial emergency fund, 1958-60, p 297; paying travel expenses for attendance at traffic court conference, 1966-68, p 275; responsibility for costs incurred in proceedings against a judge, 1966-68, p 456; juvenile court authority to determine personnel salaries, (1970) Vol 34, p 977.

3.065

LAW REVIEW CITATIONS: 48 OLR 368.

3.070 to 3.101

CASE CITATIONS: *Anderson ex rel. Poe v. Gladden*, (1955) 205 Or 538, 288 P2d 823.

3.070

NOTES OF DECISIONS

This section does not authorize a judge of one district to take cognizance of an original case pending in another district. *Sheedy v. Sheedy*, (1929) 128 Or 397, 274 P 316.

"Other like matters" includes the making of an order for a new trial upon the court's own motion in chambers. *Neal v. Haight*, (1949) 187 Or 13, 206 P2d 1197.

Rights of litigants, whether constitutional or statutory, may be waived so far as they pertain to judicial proceedings outside county where case is pending. *Alexander v. Gladden*, (1955) 205 Or 375, 288 P2d 219.

Although defendant fails to plead within the time allowed by the statute and summons and plaintiff obtains an order of default, defendant is not in default if his answer is filed before plaintiff files the order of default with the clerk. *Reeder v. Marshall*, (1958) 214 Or 154, 328 P2d 773.

Filing of an order not signed in open court means the delivery of the order to the clerk with the intent that it be filed. *Charco, Inc. v. Cohn*, (1966) 242 Or 566, 411 P2d 264.

When parties stipulate to decree in case heard in a county other than county where action was filed, they waive their right to have case heard in original county. *Lee v. Lee*, (1969) 1 Or App 115, 459 P2d 442, Sup Ct review denied.

Circuit court judge assigned to a county to hear a case does not have authority to try the case in another county if he has not previously presided in the case in the assigned county. *Id.*

An order allowing judgment notwithstanding the verdict entered more than 55 days after entry of the original order was void. *Clark v. Auto Wholesale Co., Inc.*, (1964) 237 Or 446, 391 P2d 754. *But see Charco, Inc. v. Cohn*, (1966) 242 Or 566, 411 P2d 264.

3.081

LAW REVIEW CITATIONS: 46 OLR 27.

3.130

CASE CITATIONS: *State ex rel. Madden v. Crawford*, (1956) 207 Or 76, 295 P2d 174; *Parmelee v. Mathews*, (1963) 233 Or 616, 379 P2d 869; *Phillips v. Barker*, (1966) 244 Or 513, 419 P2d 15.

ATTY. GEN. OPINIONS: Jurisdiction of adoptions, 1956-1958, p 150; term of county judge having no judicial functions, 1956-58, p 198; county judge exercising functions in administration of public schools, 1956-58, p 296; county judgeship as partisan elective office involving governor's power of appointment, 1958-60, p 113; nonapplicability to Crook County, 1958-60, p 308; order to produce prison-

er-parent in juvenile proceedings, 1960-62, p 297; retirement age of county judge, 1960-62, p 356; term of county judge having no judicial functions, 1964-66, p 327; numbering position during changeover from county judge to a third commissioner in Polk County, 1964-66, p 349; jurisdiction of adoptions in Coos County under 1967 Act, 1966-68, p 507.

LAW REVIEW CITATIONS: 44 OLR 46; 46 OLR 78, 281; 47 OLR 178.

3.150

ATTY. GEN. OPINIONS: Effect of this section on district and justice court's power to issue warrants and to sit as magistrates, 1950-52, p 230.

3.160

ATTY. GEN. OPINIONS: Designation of positions not specifically provided for, 1960-62, p 38; effect on judicial districts enumerated in other statute, 1960-62, p 38.

3.250

ATTY. GEN. OPINIONS: Validity of classifying counties to receive assistance for juvenile court services, (1970) Vol 34, p 1063.

3.255

ATTY GEN. OPINIONS: Jurisdiction of adoptions in Coos County under 1967 Act, 1966-68, p. 507; validity of classifying counties to receive assistance for juvenile court services, (1970) Vol 34, p 1063.

3.260

CASE CITATIONS: McCleskey v. Ore. State Pub. Welfare Comm., (1970) 4 Or App 308, 477 P2d 235, Sup Ct review denied.

ATTY. GEN. OPINIONS: Jurisdiction of adoptions in Coos County under 1967 Act, 1966-68, p 507.

3.265

ATTY. GEN. OPINIONS: Validity of classifying counties to receive assistance for juvenile court services, (1970) Vol 34, p 1063.

3.270

ATTY. GEN. OPINIONS: Jurisdiction of adoptions in Coos County under 1967 Act, 1966-68, p 507.

3.275

ATTY. GEN. OPINIONS: Jurisdiction of adoptions in Coos County under 1967 Act, 1966-68, p 507.

3.310

NOTES OF DECISIONS

Under a former similar statute, the rule that a judge cannot set aside an order made by a judge of the same court or a court of equal or coordinate jurisdiction on the same record is inapplicable to an erroneous order made by the presiding judge of the circuit court in the absence of the circuit judge sitting in probate department. In re Brizolari's Estate (1929) 129 Or 307, 275 P 17.

Under a former similar statute, although plaintiff erroneously brought action for allowance of curtesy as one under

probate jurisdiction rather than as an action at law for ejectment, the circuit court should not have dismissed the case for want of jurisdiction but proceeded to try it as an ejectment action. In re Going's Estate, (1948) 183 Or 346, 193 P2d 529.

FURTHER CITATIONS: In re Pittock's Will, (1921) 102 Or 159, 199 P 633, 202 P 216, 17 ALR 218; Herten v. Herten, (1922) 104 Or 423, 208 P 580; In re Workman's Estate, (1937) 156 Or 333, 65 P2d 1395, 68 P2d 479; In re Stroman's Estate, (1946) 178 Or 100, 165 P2d 576; Van Vlack v. Van Vlack (1947) 181 Or 646, 182 P2d 969, 185 P2d 575; Arnold v. Arnold, (1951) 193 Or 490, 237 P2d 963, 239 P2d 595; McCulloch v. United States Nat. Bank, (1956) 207 Or 508, 297 P2d 1077.

3.320

NOTES OF DECISIONS

Under a former similar statute, a proceeding to contest a will was within the jurisdiction of the circuit court. In re Pittock's Will, (1921) 102 Or 159, 199 P 633, 202 P 216, 17 ALR 218; Jacobson v. Holt, (1927) 121 Or 462, 255 P 901.

Under a former similar statute, a claim against the estate of a decedent was within court's jurisdiction. Jacobson v. Holt, (1927) 121 Or 462, 255 P 901.

Under a former similar statute, all probate matters generally, in Multnomah County, were to be carried on from their inception to their completion in the probate department. Leonard v. Ekwall, (1928) 124 Or 351, 264 P 463.

Under a former similar statute, a probate proceeding being assigned to the probate department of Multnomah County Circuit Court, a motion for change of judge could not properly be made either before or after such assignment. Id.

Under a former similar statute, the department of domestic relations was governed by the general laws governing other departments of the circuit court. Hallett v. Hallett, (1936) 153 Or 63, 69, 55 P2d 1143.

Jurisdiction is conferred not upon the probate department of the circuit court but upon the circuit court. McCulloch v. United States Nat. Bank, (1956) 207 Or 508, 297 P2d 1077.

FURTHER CITATIONS: In re Norman's Estate, (1938) 159 Or 197, 78 P2d 346; In re Going's Estate, (1948) 183 Or 346, 193 P2d 529.

3.330

NOTES OF DECISIONS

A complaint charging an indecent act on a child, contributing to its delinquency, comes within the exclusive and original jurisdiction of the court of domestic relations. State v. Harvey, (1926) 117 Or 466, 242 P 440.

The fact that a 17-year-old girl is married does not deprive the court of domestic relations of its jurisdiction to commit her to an institution for feeble-minded. In re Flores, (1926) 119 Or 550, 249 P 1097.

3.350

NOTES OF DECISIONS

The right to appeal to the Supreme Court from a circuit court's summary determination of a claim against the estate of a deceased person has been abolished. Brown v. Irwin, (1949) 187 Or 462, 212 P2d 729.

FURTHER CITATIONS: Smith v. Little, (1950) 188 Or 682, 214 P2d 345, 217 P2d 595; Gibbs v. Multnomah County, (1959) 219 Or 84, 346 P2d 636.

3.360

NOTES OF DECISIONS

Jurisdiction is conferred not upon the probate department of the circuit court but upon the circuit court. *McCulloch v. United States Nat. Bank*, (1956) 207 Or 508, 297 P2d 1077.

3.380

NOTES OF DECISIONS

A court rule authorizing extensions of time for settlement and filing of bills of exceptions has the force of law, under this section, and by the inherent power of all courts. *Francis v. Mut. Life Ins. Co.*, (1912) 61 Or 141, 114 P 921.

A court cannot by rule regulate a matter already regulated by statute. *Schnitzer v. Stein*, (1920) 96 Or 343, 345, 189 P 984.

The court properly struck from its records an answer not served upon plaintiff's attorney. Before filing as required by a rule of the court. *Kosher v. Stuart*, (1913) 64 Or 123, 121 P 901, 129 P 491.

A rule requiring payment of the jury fee four days before the cause is called to be set for trial under penalty of losing the right to a jury trial was in conflict with a statute requiring the clerk to collect the fee at the time the action comes on for trial, and it must yield to the statute. *Schnitzer v. Stein*, (1920) 96 Or 343, 345, 189 P 984.

3.400

CASE CITATIONS: *McCulloch v. United States Nat. Bank*, (1956) 207 Or 508, 297 P2d 1077.

3.411

NOTES OF DECISIONS

Under a former similar statute, the presiding judge had jurisdiction to hear a motion to modify a decree relating to the custody of a minor child, though the decree was rendered by another judge of the same court. *Hertzen v. Hertzen*, (1922) 104 Or 423, 208 P 580.

FURTHER CITATIONS: *State v. Gardner*, (1898) 33 Or 149, 54 P 809.

3.510

ATTY. GEN. OPINIONS: Absence of broad general statutory authority to appoint temporary officers, 1958-60, p 145.

3.560

ATTY. GEN. OPINIONS: Right of judge to receive retirement benefits and compensation for serving as judge pro tempore, 1958-60, p 136.

3.570

CASE CITATIONS: *Hammons v. Schrunk*, (1956) 209 Or 127, 305 P2d 405.

ATTY. GEN. OPINIONS: Constitutionality of appointment of a member of the legislature as judge pro tem, 1948-50, p 342.