Chapter 14

Jurisdiction; Venue; Change of Judge

14.010

NOTES OF DECISIONS
1. Jurisdiction in personam
2. Jurisdiction in rem
3. Unless he appear

1. Jurisdiction in personam

A personal judgment cannot be rendered on a money demand against a nonresident without personal service on him within the state or his voluntary appearance instead. Williamette Real Estate Co. v. Hendrix, (1896) 28 Or 485, 494, 42 P 514, 52 Am St Rep 800; Bank of Colfax v. Richardson, (1899) 34 Or 518, 524, 54 P 359, 75 Am St Rep 664; Mertens v. No. State Bank, (1913) 68 Or 273, 279, 135 P 885; Pennoyer v. Neff, (1875) 3 Sawy 274 Fed Cas No. 10,083, aff'd 95 US 714, 24 L Ed 565.

A stockholder's suit in behalf of the corporation is in personam and personal service on defendant or his appearance is necessary to a personal judgment. Baillie v. Columbia Gold Min. Co., (1917) 86 Or 1, 20, 166 P 965, 167 P 1167.

A judgment against a nonresident on publication of summons is not binding in personam. Neff v. Pennoyer, (1875) 3 Sawy 274, Fed Cas No. 10,083, aff'd 95 US 714, 24 L Ed 565.

2. Jurisdiction in rem

To obtain jurisdiction quasi in rem over property of a nonresident not served and not appearing, the property must be brought under the jurisdiction by attachment or otherwise, and the record must show it. Willamette Real Estate Co. v. Hendrix, (1896) 28 Or 485, 494, 42 P 514, 52 Am St. Rep 800; Bank of Colfax v. Richardson, (1899) 34 Or 518, 524, 54 P 359, 75 Am St Rep 664; Mertens v. No. State Bank, (1913) 68 Or 273, 279, 135 P 885; Bagley v. Bloch, (1917) 83 Or 607, 621, 163 P 425; Baillie v. Columbia Gold Min. Co., (1917) 86 Or 1, 20, 166 P 965, 167 P 1167; Pennoyer v. Neff, (1875) 3 Sawy 274, Fed Cas No. 10,083, aff'd 95 US 714, 24 L Ed 565.

A nonresident's land in the state is subject to the jurisdiction of the state courts for the establishment, for its benefit, of a road of public easement. Holland-Wash. Mtg. Co. v. County Court, (1920) 95 Or 668, 188 P 199.

The provision limiting jurisdiction of a court relating to property of a nonresident does not mean only that the land of nonresidents shall be sold for the satisfaction of their debts. Id.

3. Unless he appear

Appearance for the sole purpose of objecting to the validity of an attachment for irregularities in the proceeding, is not a general appearance. Belknap v. Charlton, (1893) 25 Or 41, 34 P 758; Meyer v. Brooks, (1896) 29 Or 203, 44 P 281, 54 Am St Rep 790.

A voluntary appearance to set aside a default decree and an application for leave to file an answer waived all defects in the service of summons and conferred upon the court jurisdiction of their persons. Fildew v. Milner, (1910) 57 Or 16, 109 P 1092; Felts v. Boyer, (1914) 73 Or 83, 144 P 420.

Where the only relief asked in the motion is to quash the service of summons defendant does not make a general appearance. Whittier v. Woods, (1910) 57 Or 432, 112 P 408; State v. Crawford, (1938) 159 Or 377, 80 P2d 873.

Where the defendant appears and asks some relief which can be granted only on the hypothesis that the court has jurisdiction of the cause and the person, it is submission to the jurisdiction. Belknap v. Charlton, (1893) 25 Or 41, 34 P 758.

If the defendant submits himself to jurisdiction it is general, whether such appearance be in terms limited to a special appearance or not. Sit You Gune v. Hurd, (1912) 61 Or 182, 186, 120 P 737, 1135.

A special appearance is not converted into a general one by an oral request to allow costs upon dismissal on quashing an attachment. Spores v. Maude, (1916) 81 Or 11, 15, 158 P 169.

Application to discharge an attachment upon giving the statutory bond works a general appearance. Roethler v. Cummings, (1917) 84 Or 442, 447, 165 P 355.

A special appearance is not within the meaning of "unless he appear in the court." Holland-Wash. Mtg. Co. v. County Court, (1920) 95 Or 668, 188 P 199.

ATTY. GEN. OPINIONS: Nonresident architect selling plans in Oregon, 1920-1922, p 598; service on nonresidents in commitment proceeding, 1940-42, p 270.

14.020

NOTES OF DECISIONS
1. Unless it appears
2. Having property herein
3. Doing business herein
4. Service on agent

1. Unless it appears

A foreign corporation is not subject to the jurisdiction of the courts of Oregon unless it appears in court, or has an agency in this state upon which service may be made, or unless it has property in this state. Aldrich v. Anchor Coal & Dev. Co., (1893) 24 Or 32, 32 P 756, 41 Am St Rep 381; Farrell v. Ore. Gold-Min. Co., (1897) 31 Or 463, 49 P 876; State v. Crawford, (1938) 159 Or 377, 80 P2d 873.

Voluntary general appearance by attorney confers personal jurisdiction over a foreign corporation. Multnomah Lbr. Co. v. Weston Basket Co., (1909) 54 Or 22, 99 P 1046, 102 P 1.

A stockholder's suit in behalf of the corporation is in personam, and personal service or appearance of defendant is necessary to a personal judgment. Baillie v. Columbia Gold Min. Co., (1917) 86 Or 1, 20, 166 P 965, 167 P 1167.

Substituted service on a company in its home state does not, if the company fails to appear, permit a personal judgment, and the action would be in the nature of an in rem proceeding as regards property in the state. State v. Crawford, (1938) 159 Or 377, 80 P2d 873.

A stipulation extending the time to a foreign corporate defendant to answer, signed by attorneys authorized to

represent it and filed in court constituted a general appearance. Multnomah Lbr. Co. v. Weston Basket Co., (1909) 54 Or 22, 99 P 1046, 102 P 1.

2. Having property herein

This section does not intend that a foreign corporation owning property in Oregon may make an appearance in court and participate in the trial of the cause and yet limit the effect of any judgment or decree to such property. State v. Crawford, (1938) 159 Or 377, 80 P2d 873.

3. Doing business herein

Mere solicitation of orders to be sent out to home office of a foreign corporation to be accepted there or rejected, does not amount to doing business within the state or subject corporation to jurisdiction of court. Hacheny v. Leary, (1885) 12 Or 40, 7 P 329; Deardorf v. Idaho Nat. Harvester Co., (1918) 90 Or 425, 177 P 33.

Service of summons within the state on an officer of a foreign corporation who happens to be casually here does not confer jurisdiction over the corporation. Aldrich v. Anchor Coal & Dev. Co., (1893) 24 Or 32, 36, 32 P 756, 41 Am St Rep 381; State v. Kanzler, (1929) 129 Or 85, 276 P 273.

Doing interstate business only within the state is within this section, when it is done by an agent permanently established in the state. Winslow Lbr. Co. v. Edward Hines Lbr. Co., (1928) 125 Or 63, 266 P 248.

Making a contract in Oregon to be performed elsewhere, and negotiating a sale of the corporate property was not transacting corporate business within the meaning of the statute. Aldrich v. Anchor Coal & Dev. Co., (1897) 24 Or 32, 36, 32 P 756, 41 Am St Rep 381.

A foreign corporation manufacturing automobiles, which it sold to dealers or distributors in the state at wholesale did not do business within the state. State v. Kanzler, (1929) 129 Or 85, 276 P 273.

4. Service on agent

A designated agent for service, appointed by a foreign corporation according to statute, is an agent for service and jurisdiction, no matter where within the state the cause of action arose. Cunningham v. Klamath Lake R. Co., (1909) 54 Or 13, 101 P 213, 1099; Ramaswamy v. Hammond Lbr. Co., (1915) 78 Or 407, 416, 152 P 223.

When service is made within the state upon the agent of a foreign corporation, it is essential to jurisdiction that it appears somewhere in the record that the corporation has an agent in the state, conducting some portion of the business for which it was organized. Aldrich v. Anchor Coal & Dev. Co., (1893) 24 Or 32, 36, 32 P 756, 41 Am St Rep 381.

The return of the summons need not show that the defendant was at the time engaged in business in this state; it may more appropriately appear elsewhere in the record. Farrell v. Ore. Gold Min. Co., (1897) 31 Or 463, 469, 49 P 876.

FURTHER CITATIONS: Richey v. Sumoge, (1966) 257 F Supp 32.

ATTY. GEN. OPINIONS: Sale of securities, consummated outside of state, to Oregon residents, 1924-26, p 22.

14.030

NOTES OF DECISIONS

An action for wrongful removal of machinery which has become a part of the realty comes within the prohibition of this section. Montesano Lbr. Co. v. Portland Iron Works, (1915) 78 Or 53, 152 P 244.

No judgment can have any effect on the title to land in another jurisdiction; the only way it may be effective is indirectly by compelling the holder of the title to convey. Williams v. Williams, (1917) 83 Or 59, 62, 162 P 834.

An action to recover rent by a grantee of a lessor against lessees is not one for recovery of real property or for injury thereto, and is properly commenced in the county in which one of the defendants resides. Abrahamson v. Brett, (1933) 143 Or 14, 21 P2d 229.

Where property sought to be replevied was outside the state when action was instituted, the court had no jurisdiction, although the proper venue was waived by failure to object. Martindale v. Scott, (1917) 86 Or 648, 168 P 933.

Third party defendant was not "transacting business" in Oregon. Third party defendant did not have the constitutionally necessary minimum contact in Oregon to permit the court to assert jurisdiction over it. Bisbee v. Safeway Stores, Inc. v. Colerain Metal Prod. Co., (1966) 290 F Supp 337.

FURTHER CITATIONS: Robinson v. Scott, (1916) 81 Or 20, 158 P 268; Mack Trucks, Inc., v. Taylor, (1961) 227 Or 376, 362 P2d 364; Richey v. Sumoge, (1966) 257 F Supp 32.

14.035

NOTES OF DECISIONS

1. In general

This section was patterned after the Illinois law, as judicially construed, and its enactment adopts such construction. David v. London Shirt Co., (1966) 259 F Supp. 848; State ex rel. Western Seed Prod. Corp. v. Campbell, (1969) 250 Or 262, 442 P2d 215, cert. denied, 393 US 1093; Myers v. Brickwedel, (1971) 259 Or 457, 486 P2d 1286.

This section is retroactive in application to causes of action arising prior to its effective date. Hiersche v. Seamless Rubber Co., (1963) 225 F Supp 682; Hicks v. Crane Co., (1964) 235 F Supp 609.

The standard whereby the constitutionality of service on a nonresident is measured requires (a) an act by which defendant purposefully avails himself of the privilege of conducting activities within the forum state and obtaining the benefit and protection of its laws; (b) that act must give rise to or result in a cause of action within the forum state; and (c) having established a substantial minimum contact, it must appear that assumption of jurisdiction based thereon accords with the due process concept of fair play and substantial justice. Shuford Mills, Inc. v. Rainier Travel Serv., Inc., (1968) 296 F Supp 240; Myers v. Brickwedel, (1971) 259 Or 457, 486 P2d 1286.

Only a minimum contact is required to give the court jurisdiction. Hiersche v. Seamless Rubber Co., (1963) 225 F Supp 682.

The mere distribution of a product likely to be used, though not purchased, in this state satisfies the minimum contact requirements necessary to support jurisdiction. David v. London Shirt Co., (1966) 259 F Supp 848.

This section was intended to reach the outer limits of federal constitutional due process. Shuford Mills, Inc., v. Rainier Travel Serv., Inc., (1968) 296 F Supp 240.

"Any" is used in an unrestricted and comprehensive sense to include every legitimate business transaction, regardless of its nature, and is not to be limited to the sale, purchase or exchange of commodities. Dickinson v. Leer, (1970) 255 Or 274, 465 P2d 885.

The due process question is whether the alleged facts are such that the forum may exercise jurisdiction without offending traditional notions of fair play and substantial justice. Myers v. Brickwedel, (1971) 259 Or 457, 486 P2d 1286.

The conduct of a nonresident consisting of the tort of criminal conversation with a married woman, when per-

formed in this state violates the public policy of Oregon and provides a substantial minimum contact. Id.

2. Particular causes

The complaint stated a cause arising from the commission of a tortious act. **Negligence,** Lamb v. Hussman Refrigerator Co., (1966) 253 F Supp 280; United Medical Lab. Inc. v. Columbia Broadcasting Sys., (1966) 256 F Supp 570; 258 F Supp 735; Richey v. Sumoge, (1966) 257 F Supp 32; Portland Paramount Corp. v. Twentieth Century-Fox Film Corp., (1966) 258 F Supp 962; State ex rel. Western Seed Prod. Corp. v. Campbell, (1968) 250 Or 262, 442 P2d 215, cert. denied, 393 US 1093; Oregon Farm Bu. Ins. Co. v. E. L. Caldwell & Sons, Inc., (1969) 306 F Supp 835; **criminal conversation,** Myers v. Brickwedel, (1971) 259 Or 457, 486 P2d 1286.

The activities of defendant constituted the transaction of business in Oregon. Hicks v. Crane Co., (1964) 235 F Supp 609; Lamb v. Hussman Refrigerator Co., (1966) 253 F Supp 280; Rake v. City Lbr. Co., (1967) 283 F Supp 870; State ex rel. White Lbr. Sales, Inc. v. Sulmonetti, (1968) 252 Or 121, 448 P2d 571.

Defendant's actions fell within the "minimum contact" constitutional requirement. Rake v. City Lbr. Co., (1967) 283 F Supp 870; Goldenaire, Inc. v. Lycoming Div. of Avco Corp., (1968) 290 F Supp 349.

The U.S. District Court had jurisdiction under either paragraph (a) or (b) of subsection (1). Rosenlund v. Transnational Ins. Co., (1964) 237 F Supp 599.

This section is applicable under the Federal Rules of Civil Procedure. Id.

Third party defendant was not "transacting business" in Oregon. Third party defendant did not have the constitutionally necessary minimum contact in Oregon to permit the court to assert jurisdiction over it. Bisbee v. Safeway Stores, Inc. v. Colerain Metal Prod. Co., (1966) 290 F Supp 337.

The defendant had not committed a tortious act in Oregon. Taylor v. Portland Paramount Corp., (1967) 383 F2d 634, rev'g, 258 F Supp 962.

The defendant was not doing business in Oregon. Id.

FURTHER CITATIONS: Hobgood v. Sylvester, (1965) 242 Or 162, 408 P2d 925; Temco, Inc., v. Gen. Screw Prod., Inc., (1966) 261 F Supp 793; Morgan v. Harris, (1970) 3 Or App 402, 474 P2d 366.

LAW REVIEW CITATIONS: 44 OLR 131, 322-325; 49 OLR 273-286; 4 WLJ 331-349; 5 WLJ 589-600.

14.040

NOTES OF DECISIONS

1. Actions as to realty
2. Recovery of personalty
3. Situs of subject of suit

1. Actions as to realty

A complaint alleging injury to real property situated within another state does not state a cause of action within the jurisdiction of the court. Montesano Lbr. Co. v. Portland Iron Works, (1915) 78 Or 53, 152 P 244; Dippole v. Cathlamet Timber Co., (1920) 98 Or 183, 193 P 909.

A decree attempting to set aside a deed to property situated in another county is a nullity. Crocker v. Howland, (1933) 144 Or 233, 24 P2d 327.

For purpose of determining venue, action by owner of property to recover compensation from state for injuries to his land which constituted a taking of his property without condemnation proceedings is one for injuries to land. State Hwy. Comm. v. Goodwin, (1956) 208 Or 514, 303 P2d 216.

2. Recovery of personalty

The situs of the chattel in the county in which the action is commenced is not a jurisdictional requisite. Mack Trucks Inc. v. Taylor, (1961) 227 Or 376, 362 P2d 364. Overruling Kirk v. Matlock, (1885) 12 Or 319, 7 P 322; Moorehouse v. Donaca, (1887) 14 Or 430, 13 P 112; Byers v. Ferguson, (1902) 41 Or 77, 65 P 1067, 68 P 5; Beard v. Beard, (1913) 66 Or 512, 520, 133 P 797, 134 P 1196 and Martindale v. Scott, (1917) 86 Or 648, 168 P 933. Mack Trucks Inc. v. Taylor, supra, **distinguished in** Cunningham v. State Comp. Dept., (1969) 1 Or App 127, 459 P2d 892.

A complaint in replevin should state where the property is detained as well as from where it was taken, but an omission so to state is not fatal after an answer has been filed and judgment has been entered. Byers v. Ferguson, (1902) 41 Or 77, 80, 65 P 1067, 68 P 5.

Defendant challenging the authority of a court to try an action in replevin should, unless the complaint alleges that the property has been taken in such county, distinctly specify the objection in his demurrer. Templeton v. Lloyd, (1911) 59 Or 52, 57, 109 P 1119, 115 P 1068.

Presence of chattel in county where action is brought is essential only if defendant raises question of venue. Mack Trucks Inc. v. Taylor, (1961) 227 Or 376, 362 P2d 364.

3. Situs of subject of suit

A suit to foreclose a real estate mortgage is local and can be brought only in the county in which the land is situated. The Hollady Case, (1886) 29 Fed 226, 231; Swift v. Meyers, (1888) 13 Sawy 583, 37 Fed 37, 40.

A court may make its decree in personam for the specific performance of a contract for the sale of land in another county, notwithstanding this section. Johnston v. Wadsworth, (1893) 24 Or 494, 34 P 13.

A decree attempting to set aside a deed to property situated in another state is a nullity. Crocker v. Howland, (1933) 144 Or 223, 24 P2d 327.

Although a court does not have jurisdiction to set aside a deed to lands in another state, it does have jurisdiction to compel the grantees of those lands to account therefor to creditors, if the deed was fraudulently given or accepted. Id.

Suit to enjoin a nuisance is not a suit for the determination of an adverse claim, estate or interest in real property and should be brought in the county in which defendants reside or may be found. State v. Peters, (1949) 185 Or 350, 203 P2d 299, 7 ALR 2d 473.

A venue of a suit to foreclose a lien in favor of the state, when no other statutory provision as to venue had been made, was governed by this section. State v. Swensk, (1939) 161 Or 281, 89 P2d 587.

FURTHER CITATIONS: Cunningham v. Klamath Lake R. Co., (1909) 54 Or 13, 101 P 213, 1099; Altschul v. State, (1914) 72 Or 591, 144 P 124; First Nat. Bank v. Courtright, (1917) 82 Or 490, 158 P 277, 161 P 966; Schleef v. Purdy, (1923) 107 Or 71, 214 P 137; Mutzig v. Hope, (1945) 176 Or 368, 158 P2d 110; Macomber v. Waxbom, (1958) 213 Or 412, 325 P2d 253; International Trans. Equip. Lessors, Inc. v. Bohannon, (1969) 252 Or 356, 449 P2d 847.

ATTY. GEN. OPINIONS: Venue of suit to foreclose lien on land situate in two counties, 1928-30, p 550.

LAW REVIEW CITATIONS: 1 OLR 93, 142; 3 OLR 344; 15 OLR 287; 17 OLR 110; 36 OLR 48, 49, 50, 65; 41 OLR 95; 46 OLR 134; 47 OLR 279.

14.050

NOTES OF DECISIONS

In an action for personal injuries brought against State

Board of Higher Education, naming the individual members and another person, venue was properly laid in Lane County, where the principal office of the board was located. State v. Reid, (1960) 221 Or 558, 352 P2d 466.

FURTHER CITATIONS: Roskop v. Trent, (1968) 250 Or 397, 443 P2d 174.

LAW REVIEW CITATIONS: 1 OLR 142.

14.060

NOTES OF DECISIONS

This section indicates the proper venue in matters where jurisdiction has been conferred by other means. Place v. Friesen Lbr. Co., (1970) 2 Or App 6, 463 P2d 596, rev'd on other grounds, 258 Or 98, 481 P2d 617.

14.070

NOTES OF DECISIONS

If a divorce suit be brought in a county where neither spouse resides, but defendant answers without seeking a change under the statute, the venue is waived. Hanzlik v. Hanzlik, (1924) 110 Or 95, 222 P 1081; Geis v. Gallus, (1929) 130 Or 619, 278 P 969.

A divorced wife's suit to enforce her rights in land conveyed in fraud of her divorce suit, which by the fraud and her ignorance failed to determine her rights, should be brought in the county where the land lies. Barrett v. Failing, (1883) 111 US 523, 4 S Ct 598, 28 L Ed 505.

In a divorce suit, the subject matter is the cause and the relief sought; and the filing of a complaint gives the court prior jurisdiction over a cross suit in another county where complaint is filed later. Matlock v. Matlock, (1918) 87 Or 307, 170 P 528.

A determination by the court that the wife is a resident in the county in which she instituted the divorce suit, if based on good and sufficient evidence, will not be disturbed on review. LaFollett v. LaFollett, (1932) 138 Or 411, 2 P2d 1109, 6 P2d 1085.

"Resides" as used in this section means domicile. Smith v. Smith, (1955) 205 Or 650, 289 P2d 1086.

This section does not require that one reside in a particular county for any definite length of time before instituting a suit for divorce. Id.

Where just cause exists, wife may acquire a domicile separate from that of her husband for the purposes of jurisdiction over her divorce suit. Id.

FURTHER CITATIONS: Hubner v. Hubner, (1913) 67 Or 557, 136 P 667; Mutzig v. Hope, (1945) 176 Or 368, 158 P2d 110.

LAW REVIEW CITATIONS: 1 OLR 95, 142; 3 OLR 344; 36 OLR 48.

14.080

NOTES OF DECISIONS

1. Constitutionality
2. Actions against individuals residing in the state
3. Actions against nonresidents
4. Actions against corporations
5. Venue and jurisdiction

1. Constitutionality

This section was not unconstitutional as a denial of equal protection because it allowed a plaintiff to lay venue of an action against nonresidents in any county. State v. Latourette, (1949) 186 Or 84, 205 P2d 849, 8 ALR 2d 803.

2. Actions against individuals residing in the state

Actions for damages resulting from personal injuries are transitory. Shmit v. Day, (1895) 27 Or 110, 39 P 870; Ramaswamy v. Hammond Lbr. Co., (1915) 78 Or 407, 152 P 223.

In a transitory action against a natural person, any county is the right county in which to sue if the defendant resides or may be found and served there, or if he be a nonresident of the state. Mutzig v. Hope, (1945) 176 Or 368, 158 P2d 110; State v. Latourette, (1949) 186 Or 84, 205 P2d 849, 8 ALR 2d 803.

An action upon a note and for money had and received to defendant's use may be instituted and service had in the county where he resides or may be found. Bramwell v. Owen, (1921) 276 Fed 36.

An action for rent is properly brought in the county where the lessee resides, although the property leased was elsewhere. Abrahamson v. Brett, (1933) 143 Or 14, 21 P2d 229.

A suit on a road-building contract against county and bank to which contractor had assigned as collateral security an amount due under pretended final estimate was properly brought in county in which bank was situated, though different from defendant county. Sweeney v. Jackson County, (1919) 93 Or 96, 178 P 365, 182 P 380.

3. Actions against nonresidents

A transitory action against a nonresident of this state may be brought in any county that the plaintiff may select, and personal service anywhere in the state will be good. Fratt v. Wilson, (1897) 30 Or 542, 546, 47 P 706, 48 P 356.

An action against a foreign corporation may not be commenced in any county selected by plaintiff. Mutzig v. Hope, (1945) 176 Or 368, 158 P2d 110.

4. Actions against corporations

A private corporation may be sued either where it resides or where the cause arose, except in those cases that have been impressed with a local character by the statute. Holgate v. Ore. Pac. R. Co., (1888) 16 Or 123, 17 P 859; Bailey v. Malheur Irr. Co., (1899) 36 Or 54, 58, 57 P 910; Winter v. Union Packing Co., (1908) 51 Or 97, 93 P 930; Cunningham v. Klamath Lake R. Co., (1909) 54 Or 13, 16, 101 P 213, 1099; State v. Almeda Consol. Mines Co., (1923) 107 Or 18, 212 P 789; State v. Updegraff, (1943) 172 Or 246, 141 P2d 251; Mutzig v. Hope, (1945) 176 Or 368, 158 P2d 110; State v. Circuit Court, (1949) 187 Or 591, 211 P2d 994.

This section applies to corporations, except so far as they are affected by ORS 15.080. Holgate v. Ore. Pac. R. Co., (1886) 16 Or 123, 124, 17 P 859.

The cause of action against a life insurance company arises in the county where the insured resided when he died. Hildebrand v. United Artisans, (1905) 46 Or 134, 79 P 347, 114 Am St Rep 852.

The return of summons, in an action against a corporation brought where the cause of action arose, must show the reason for making the service in the manner pursued. Id.

Laws 1903, p. 39, requiring foreign corporations to appoint a resident attorney, amends this section by implication only, and is not violative of constitutional inhibition. Cunningham v. Klamath Lake R. Co., (1909) 54 Or 13, 101 P 213, 1099.

A corporation's residence is where it has its principal place of business. Davies v. Ore. Placer & Power Co., (1912) 61 Or 594, 123 P 906.

Service of summons on a foreign corporation must be made as prescribed in ORS 15.080. State v. Norton, (1929) 131 Or 382, 283 P 12.

Service of summons upon the resident agent of a foreign corporation is sufficient to give jurisdiction to any court of the state in which the venue of an action is properly laid. State v. Updegraff, (1943) 172 Or 246, 141 P2d 251.

Overruling Ramaswamy v. Hammond Lbr. Co., (1915) 78 Or 407, 152 P 223.

Foreign corporations receive parity of treatment with domestic corporations with respect to the venue of suits against them in transitory actions. State v. Updegraff, (1943) 172 Or 246, 141 P2d 251.

The proviso has no reference to any foreign corporation lawfully doing business in Oregon. Id.

Service of summons made on the president in another county than where the action is pending was sufficient prima facie to give the court jurisdiction, where the complaint showed that the corporation was doing business in the state, and that such action was for services upon contract within the state. Brown v. Lewis, (1907) 50 Or 358, 362, 92 P 1058.

An action against a foreign corporation for breach of contract to purchase lumber was brought where personal service could be made upon the defendant, irrespective of where the cause of action arose. Winslow Lbr. Co. v. Edward Hines Lbr. Co., (1928) 125 Or 63, 266 P 248.

5. Venue and jurisdiction

Suing a corporation on a transitory action in other than the county in which the cause arose or defendant had its principal place of business is waived by making a voluntary appearance. State v. Almeda Consol. Mines Co., (1923) 107 Or 18, 212 P 789.

Statutes relating to venue are procedural merely, and not jurisdictional in the strict sense. Mutzig v. Hope, (1945) 176 Or 368, 158 P2d 110.

A valid decree may be rendered by default in a transitory action although brought in the wrong county. Id.

In both transitory and local actions in which the subject of the action is located within the state, a general appearance by the defendant authorizes the court to try the case upon the merits though the action be filed in the wrong county. Id.

In a transitory non-tortious action, if action is properly filed in the county of defendant's residence, the court acquires jurisdiction of defendant by personal service in another county. Id.

When the action is local and is brought in one state while the property is in another state, as distinguished from county, the erroneous venue is jurisdictional and a general appearance does not waive the defect. Id.

The court acquires jurisdiction after personal service although venue be improperly laid, because the venue statutes confer only a personal privilege that is waived unless properly pleaded. Id.

Where a corporation transacts business in two or more offices, one of which is the place designated in the articles of incorporation as its principal place of business, venue must be laid in the county in which the designated office is located. State v. Circuit Court, (1949) 187 Or 591, 211 P2d 994.

For purpose of determining venue, action by owner of property to recover compensation from state for injuries to his land which constituted a taking of his property without condemnation proceedings is one for injuries to land. State Hwy. Comm. v. Goodwin, (1956) 208 Or 514, 303 P2d 216.

In an action for personal injuries brought against State Board of Higher Education, naming the individual members and another person, venue was properly laid in Lane County, where the principal office of the board was located. State v. Reid, (1960) 221 Or 558, 352 P2d 466.

FURTHER CITATIONS: Brown v. Deschutes Bridge Co., (1885) 23 Or 7, 35 P 177; Dunham v. Shindler, (1889) 17 Or 256, 20 P 326; Belknap v. Charlton, (1893) 25 Or 41, 34 P 758; Nelson v. Smith, (1937) 157 Or 292, 69 P2d 1072; Semler v. Cook-Waite Lab., Inc., (1954) 203 Or 139, 278 P2d 150; State ex rel. White Lbr. v. Solmonetti, (1968) 252 Or 121, 448 P2d 571.

ATTY. GEN. OPINIONS: Service on persons liable for support of public welfare recipient, 1942-44, p 134; filing fees on change of venue, 1962-64, p 260.

LAW REVIEW CITATIONS: 1 OLR 142; 8 OLR 28; 15 OLR 287; 36 OLR 48, 50, 55, 56, 59; 43 OLR 155; 47 OLR 280.

14.110

NOTES OF DECISIONS

1. In general
2. Prejudice of judge
3. Prejudice of county inhabitants
4. Practice and appeal

1. In general

Except for causes specified in the statute, a court has no authority to change the venue of a case. Commercial Nat. Bank v. Davidson, (1889) 18 Or 57, 66, 22 P 517; Elliott v. Wallowa County, (1910) 57 Or 236, 239, 109 P 130, Ann Cas 1913A, 117; State v. Nagel, (1949) 185 Or 486, 202 P2d 640, cert. denied, 338 US 818, 70 S Ct 60, 94 L Ed 39.

It is within the sound discretion of the court whether to grant a change of venue. State v. Pomeroy, (1896) 30 Or 16, 19, 46 P 797; Multnomah County v. Willamette Towing Co., (1907) 49 Or 204, 219, 89 P 389; State v. Caseday, (1911) 58 Or 429, 436, 115 P 287; State v. Kingsley, (1931) 137 Or 305, 2 P2d 3, 3 P2d 113; State v. Nagel, (1949) 185 Or 486, 202 P2d 640, cert. denied, 338 US 818, 70 S Ct 60, 94 L Ed 39.

The word "trial," in the section, has reference only to the trial of a question of fact upon the merits. State v. Pac. Live Stock Co., (1919) 93 Or 196, 182 P 828.

Unless a court has jurisdiction, it is without power to make a valid order for change of venue. Mutzig v. Hope, (1945) 176 Or 368, 158 P2d 110.

Motion for change of venue comes too late if made after the case is tried on its merits. Mack Trucks Inc. v. Taylor, (1961) 227 Or 376, 362 P2d 364.

Statutes relating to right to change venue of actions filed in the wrong place are to be liberally construed. Rose v. Etling, (1970) 255 Or 395, 467 P2d 633.

2. Prejudice of judge

The provision for change of venue for prejudice of the judge should receive a broad and liberal construction. Packwood v. State, (1893) 24 Or 261, 33 P 674; Straub v. State, (1927) 121 Or 451, 255 P 897.

Statements of the judge before the trial amounting to a prejudgment of the case in favor of the plaintiff, entitled defendant to a change of venue. Rugenstein v. Ottenheimer, (1915) 78 Or 371, 152 P 215, Ann Cas 1917E, 953.

The disqualification of a trial judge in an equity suit will not prevent the Supreme Court from reviewing a case, as such suit is tried de novo on appeal. Henderson v. Tillamook Hotel Co., (1915) 76 Or 379, 386, 148 P 57, 149 P 473.

The fact that a circuit judge was a prosecuting witness and possibly pecuniarily liable as private prosecutor was not grounds for a change of venue where the disqualified judge had already been replaced. State v. Nagel, (1949) 185 Or 486, 202 P2d 640, cert. denied, 338 US 818, 70 S Ct 60, 94 L Ed 39.

3. Prejudice of county inhabitants

In an action brought by a county to recover damages, a defendant is entitled to a change of venue on the grounds that taxpayers when called as trial jurors may be challenged for implied bias. Multnomah County v. Willamette Towing Co., (1907) 49 Or 204, 89 P 389.

The failure of the plaintiff to move for change of venue in a suit against a county is a waiver of his right to challenge taxpayers of the county for implied bias as jurymen. Elliott v. Wallowa County, (1910) 57 Or 236, 240, 109 P 130, Ann Cas 1913A, 117.

Where a county brings suit as trustee for the real party in interest a change of venue will be denied. Columbia County v. Consol. Contract Co., (1917) 83 Or 251, 163 P 438.

In an action against a school district, a motion did not state a compelling reason for the change of venue by showing prospective jurors paid taxes to the county. Davis v. Miller, (1967) 246 Or 102, 424 P2d 250.

4. Practice and appeal

Counter-affidavits or contest by other means of the right of the party applying to have the change may properly be made. Lander v. Miles, (1868) 3 Or 35; State v. Kline, (1908) 50 Or 426, 429, 93 P 237.

A ruling granting or refusing a change of place of trial will not be disturbed on appeal, unless there is a clear abuse of discretion. Multnomah County v. Willamette Towing Co., (1907) 49 Or 204, 89 P 389; State v. Nagel, (1949) 185 Or 486, 202 P2d 640, cert. denied, 338 US 818, 70 S Ct 60, 94 L Ed 39.

Objection to venue is waived by failure to raise it before trial on the merits. Johnston v. Wadsworth, (1893) 24 Or 494, 34 P 13; Schleef v. Purdy, (1923) 107 Or 71, 214 P 131; Hanzlik v. Hanzlik, (1924) 110 Or 95, 222 P 1081; Geis v. Gallus, (1929) 130 Or 319, 278 P 969; Mutzig v. Hope, (1945) 176 Or 368, 158 P2d 110.

There are two ways at least by which the privilege of objecting to venue may be exercised: defendant may move to quash and for a dismissal; or he may appear and answer, and having put the case at issue on a question of fact, exercise his privilege by a motion for change of venue. State v. Norton, (1929) 131 Or 382, 283 P 12; Mutzig v. Hope, (1945) 176 Or 368, 158 P2d 110.

Commencement of a suit of local nature in the wrong county was cured by the judge's order making change to the proper county. Weiss v. Bethel, (1880) 8 Or 522, 527.

A deception practiced upon the defendant by which he was induced to come within the county where process was served upon him, where no injury was occasioned thereby, was not ground for change of venue. Commercial Nat. Bank v. Davidson, (1889) 18 Or 57, 66, 22 P 517.

Appearance on motion to change the venue is a general appearance, though purporting to be special. Jones v. Jones, (1911) 59 Or 308, 310, 117 P 414.

Where there are no counter-affidavits, affidavits in support of a motion for change of venue must be taken as admitted. Rugenstein v. Ottenheimer, (1915) 78 Or 371, 152 P 215, Ann Cas 1917E, 953.

A defendant waives his right to question the venue of a case by answering to the merits. State v. Norton, (1929) 131 Or 382, 283 P 12.

The dismissal because of improper venue would not be for want of jurisdiction, but for want of authority under the venue statute to try the case in the wrong county and for want of a proper motion authorizing change of venue. Mutzig v. Hope, (1945) 176 Or 368, 158 P2d 110.

It was not error to deny motion for change of venue, where circuit judge had excused jurors and ordered additional jurors summoned for the panel in the regular course of court business, had set bail for defendant, disqualified himself as judge and testified as witness for the prosecution. State v. Nagel, (1949) 185 Or 486, 202 P2d 640, cert. denied, 338 US 818, 70 S Ct 60, 94 L Ed 39.

It was not error to deny a motion made on the ground that an impartial trial could not be had, where the examination of the jurors tended to show the absence of difficulty in filling the box with unprejudiced jurors. State v. Kingsley, (1931) 137 Or 305, 2 P2d 3, 3 P2d 113.

FURTHER CITATIONS: Brown v. Deschutes Bridge Co., (1885) 23 Or 7, 35 P 177; Ramaswamy v. Hammond Lbr. Co., (1915) 78 Or 407, 152 P 223; Sweeney v. Jackson County, (1919) 93 Or 96, 178 P 365, 182 P 380; Wyman v. Noonday Min. Co., (1921) 100 Or 211, 197 P 289; Shaughnessy v. Kimball, (1923) 106 Or 484, 212 P 483; Holland v. Strawn, (1962), 233 Or 64, 377 P2d 1; Burnett v. N.Y. Cent. R.R., (1964) 380 US 424, 85 S Ct 1050, 13 L Ed 2d 941; Huffstutter v. Lind, (1968) 250 Or 295, 442 P2d 227; International Trans. Equip. Lessors, Inc. v. Bohannon, (1969) 252 Or 356, 449 P2d 847; Place v. Freisen Lbr. Co., (1970) 2 Or App 6, 463 P2d 596, rev'd, 258 Or 98, 481 P2d 617.

ATTY. GEN. OPINIONS: Change of venue in justices' courts, 1920-22, p. 222; filing fees and fees to be paid jurors and bailiff upon change of venue, 1944-46, p 5; changing venue from district court, 1960-62, p 352; filing fees on change of venue, 1962-64, p 260.

LAW REVIEW CITATIONS: 1 OLR 142; 3 OLR 344; 11 OLR 410; 23 OLR 69; 36 OLR 64, 65; 48 OLR 360, 373, 374.

14.120

NOTES OF DECISIONS

Entry of a default judgment constitutes a waiver by defendant of any right he might have had for change of venue. Mutzig v. Hope, (1945) 176 Or 368, 158 P2d 110.

Prior to the 1963 amendment, defendant's remedy to improper venue was a motion for change of venue after the case was at issue on a question of fact. Mack Trucks Inc. v. Taylor, (1961) 227 Or 376, 362 P2d 364. Overruling Mutzig v. Hope, (1945) 176 Or 368, 158 P2d 110.

Motion for change of venue comes too late if made after the case is tried on its merits. Mack Trucks Inc. v. Taylor, (1961) 227 Or 376, 362 P2d 364.

FURTHER CITATIONS: State v. Pac. Live Stock Co., (1919) 93 Or 192, 182 P 828.

ATTY. GEN. OPINIONS: Filing fees and fees to be paid jurors and bailiff upon change of venue, 1944-46, p 5.

LAW REVIEW CITATIONS: 1 OLR 93; 36 OLR 60, 61, 65, 67; 41 OLR 95; 48 OLR 374, 375.

14.130

ATTY. GEN. OPINIONS: Filing fees and fees to be paid jurors and bailiff upon change of venue, 1944-46, p 5; changing venue from district court, 1960-62, p 352.

14.140

ATTY. GEN. OPINIONS: Liability for costs of change of venue, 1924-26, p 385; filing fees on change of venue, 1962-64, p 260.

14.160

NOTES OF DECISIONS

The change of venue deprives the court in which the cause was originally begun of all further jurisdiction. Benton County State Bank v. W. Coast Spruce Co., (1929) 128 Or 405, 272 P 171.

ATTY. GEN. OPINIONS: Changing venue from district court, 1960-62, p 352; filing fees on change of venue, 1962-64, p 260.

14.170

ATTY. GEN. OPINIONS: Filing fees and fees to be paid jurors and bailiff upon change of venue, 1944-46, p 5.

14.210

NOTES OF DECISIONS

A justice of the peace cannot preside over a criminal prosecution for trespass to land when he is interested in the land involved. Packwood v State, (1893) 24 Or 261, 33 P 674.

Even though his clients' interests are only remotely involved, a judge can be successfully challenged under this section without an averment of prejudice. Oliver v. Jordan Valley Land & Cattle Co., (1931) 137 Or 243, 1 P2d 1097.

In order to disqualify a judge under paragraph (1)(b) the record must indicate that he was not present and sitting as a member of the court at the hearing in question. Klamath Dev. Co. v. Lewis, (1931) 136 Or 445, 299 P 705.

An impartial judiciary is provided for by the statute. Valley & Siletz R. Co. v. Thomas, (1935) 151 Or 80, 143, 48 P2d 358.

"Regulation of the order of business in court" includes ministerial or nondiscretionary acts such as the receiving of an indictment. State v. Nagel, (1949) 185 Or 486, 202 P2d 640, cert. denied, 338 US 818, 70 S Ct 60, 94 L Ed 39.

Paragraph (b) of the first subsection is modified by the provisions of the Post-Conviction Relief Act. Eubanks v. Gladden, (1964) 236 F Supp 129.

A judge who sold his one share of stock in defendant corporation to plaintiff two days before suit was brought was not disqualified. Henderson v. Tillamook Hotel Co., (1915) 76 Or 379, 148 P 57, 149 P 473.

The fixing of defendant's bail by a circuit court judge who afterwards disqualified himself and became a prosecuting witness, did not prejudice defendant's rights or violate any statutory prohibition so as to render the trial a nullity. State v. Nagel, (1949) 185 Or 486, 202 P2d 640, cert. denied, 338 US 818, 70 S Ct 60, 94 L Ed 39.

The fact that a circuit court judge was a prosecuting witness and possibly pecuniarily liable as a private prosecutor was not grounds for a change of venue where the disqualified judge had already been replaced. Id.

That the Supreme Court entered into a contract with a publisher did not disqualify the court from rendering a decision in a taxpayer's suit to enjoin the publication. Woodward v. Pearson, (1940) 165 Or 40, 103 P2d 737.

FURTHER CITATIONS: State v. Reid, (1959) 207 Or 617, 298 P2d 990; State v. Freeman, (1971) 4 Or App 610, 480 P2d 444, Sup Ct **review denied.**

ATTY. GEN. OPINIONS: Procedure, other than change of venue, when justice of the peace is disqualified, 1966-68, p 250.

LAW REVIEW CITATIONS: 11 OLR 410; 23 OLR 69; 48 OLR 363.

14.250 to 14.270

NOTES OF DECISIONS

The "prejudice" of which the statute speaks is not prejudice in fact, but a statutory prejudice which may be established by an affidavit that contains nothing but conclusions. Taylor v. Gladden, (1962) 232 Or 599, 377 P2d 14.

The motion was not timely filed. State v. Little, (1967) 249 Or 297, 431 P2d 810, cert. denied, 390 US 955.

FURTHER CITATIONS: State v. Edwards, (1970) 3 Or App 179, 471 P2d 843.

LAW REVIEW CITATIONS: 48 OLR 360-375.

14.250

NOTES OF DECISIONS

1. In general
2. Under former similar statute

1. In general

The issue of good faith may be raised in proceedings under this section. State ex rel. Lovell v. Weiss, (1967) 250 Or 252, 430 P2d 357, 442 P2d 241.

2. Under former similar statute

A former similar statute was constitutional. U'Ren v. Bagley, (1926) 118 Or 77, 245 P 1074, 46 ALR 1173; State Capitol Reconstruction Comm. v. McMahan, (1939) 160 Or 83, 83 P2d 482.

To direct a change of venue to another county on the filing of an affidavit of prejudice was improper. State v. Stilwell, (1921) 100 Or 637, 198 P 559.

The mere filing of a motion and affidavit of prejudice did not deprive the judge of further power to proceed with the case. Harju v. Anderson, (1924) 111 Or 414, 225 P 1100.

It was the duty of the judge to deny a tardy application for change of venue because of prejudice of the judge. Id.

The disqualification of a judge by defendant's affidavit did not prevent his returning after "trial" and granting an extension of time within which to file a transcript of appeal. Lovell v. Potts, (1924) 112 Or 538, 207 P 1006, 226 P 1111.

The mere filing of an affidavit could not deprive a court of the power to determine a matter already submitted to it for decision. Ralston v. Stone, (1925) 113 Or 506, 232 P 631.

The court had no discretion; the challenge of prejudice ipso facto disqualified the judge from acting further. U'Ren v. Bagley, (1926) 118 Or 77, 245 P 1074, 46 ALR 1173.

Even a disqualified judge could sign a routine order like one for substitution of defendants. Clatsop County v. Taylor, (1941) 167 Or 563, 119 P2d 285.

A decree entered by a judge disqualified under the terms of this section was void. Western Athletic Club v. Thompson, (1942) 169 Or 514, 129 P2d 828.

The former statute was narrowly construed. Rex Mtge. Loan Co. v. Stanfield, (1952) 194 Or 698, 244 P2d 173.

FURTHER CITATIONS: Sprague v. City of Astoria, (1923) 106 Or 253, 204 P 956, 206 P 849; Shaughnessy v. Kimball, (1923) 106 Or 484, 212 P 483; Re Estate of Roedler, (1924) 110 Or 147, 222 P 301; Leonard v. Ekwall, (1928) 124 Or 351, 264 P 463; Taylor v. Nelson, (1932) 139 Or 155, 5 P2d 707, 8 P2d 1089; Mursener v. Redding, (1945) 176 Or 617, 160 P2d 307; Huffstutter v. Lind, (1968) 250 Or 295, 442 P2d 227; State v. Freeman, (1971) 4 Or App 610, 480 P2d 444, Sup Ct **review denied.**

LAW REVIEW CITATIONS: 11 OLR 410; 23 OLR 93; 35 OLR 3.

14.260

NOTES OF DECISIONS

1. In general
2. Under former similar statute
   (1) In general
   (2) Timely motions
   (3) Affidavits

1. In general

Although the affidavit establishes only an imputation of prejudice, the imputation, if made in good faith, is sufficient to recuse the judge. State ex rel. Lovell v. Weiss, (1967) 250 Or 252, 430 P2d 357, 442 P2d 241.

The attorney carried his burden of good faith. Id.

Writ of mandamus is proper remedy to challenge the denial of a motion for a change of judge. State v. Etling, (dictum), (1970) 256 Or 3, 470 P2d 950.

2. Under former similar statute

(1) In general. "Party" was used in a collective sense and if there be a plurality of plaintiffs or defendants, they were all only one party litigant. U'Ren v. Bagley, (1926) 118 Or 77, 245 P 1074, 46 ALR 1173.

Where there was more than one attorney appearing for a party, each was to have joined in the application. Id.

A contempt proceeding against a husband failing to pay support to a child as directed by divorce decree was considered a "proceeding." Hallett v. Hallett, (1936) 153 Or 63, 55 P2d 1143.

An affidavit by an agent in charge of the litigation on behalf of a quasi corporate party was proper. State Capitol Reconstruction Comm. v. McMahan, (1939) 160 Or 83, 83 P2d 482.

The former statute was narrowly construed. Rex Mtge. Loan Co. v. Stanfield, (1952) 194 Or 698, 244 P2d 173.

(2) Timely motions. A motion before any ruling in the case was timely. Harju v. Anderson, (1924) 111 Or 414, 225 P 1100; State v. Circuit Court, (1925) 114 Or 6, 233 P 563, 234 P 262.

After one trial of the cause, when judgment therein set aside and a new trial ordered, an affidavit of prejudice was too late. State v. Circuit Court, (1925) 114 Or 6, 233 P 563, 234 P 262.

An affidavit of prejudice could not be filed after the hearing upon a motion or demurrer, or the commencement of the trial. Phy v. Allen, (1925) 115 Or 168, 236 P 1056.

Where after the filing of a complaint and the issuance of an ex parte mandatory order, defendant filed an affidavit of prejudice, the judge was disqualified to proceed further. State v. Mart, (1931) 135 Or 603, 283 P 23, 295 P 459.

A letter to the judge, not bearing the title of any cause, and unattended by any affidavit, accusing the judge of prejudice and requesting a change was not a motion. State v. Morgan, (1935) 152 Or 1, 48 P2d 766, 52 P2d 186.

Failure to mention all of the alternatives which were available to the judge against whom the motion was filed did not render motion defective. State Capitol Reconstruction Comm. v. McMahan, (1939) 160 Or 83, 83 P2d 482.

(3) Affidavits. An affidavit not stating that "it is made in good faith and not for the purpose of delay" did not comply with the section. State v. Morgan, (1935) 152 Or 1, 48 P2d 766, 52 P2d 186.

An affidavit containing a categorical statement that the judge is prejudiced was sufficient, even though it also alleged that the affiants "believe they cannot have a fair and impartial trial." State Capitol Reconstruction Comm. v. McMahan, (1939) 160 Or 83, 83 P2d 482.

FURTHER CITATIONS: Shaughnessy v. Kimball, (1923) 106 Or 484, 212 P 483; State v. Ring, (1927) 122 Or 644, 259 P 780; Strowbridge v. City of Chiloquin, (1929) 130 Or 444, 277 P 722, 280 P 657; Hallett v. Hallett, (1936) 153 Or 63, 55 P2d 1143; State v. Weiss, (1964) 237 Or 358, 391 P2d 608; Kepl v. Manzanita Corp., (1967) 246 Or 170, 424 P2d 674.

LAW REVIEW CITATIONS: 5 OLR 316; 11 OLR 410; 15 OLR 278; 35 OLR 3; 39 OLR 114.

14.270

NOTES OF DECISIONS

1. In general

This section applies to the exception provided in ORS 14.260. State v. Weiss, (1964) 237 Or 358, 391 P2d 608.

The motion was timely filed. Kepl v. Manzanita Corp., (1967) 246 Or 170, 424 P2d 674.

2. Under former similar statute

After a motion and demurrer were presented and argued, and the case set for trial, it was too late to file an affidavit of prejudice. Barton v. Brown, (1926) 117 Or 525, 244 P 660; Strowbridge v. City of Chiloquin, (1929) 130 Or 444, 277 P 722, 280 P 657.

After the case had gone to judgment and a motion to set aside the judgment had been filed, a motion under the section was too late. Re Estate of Roedler, (1924) 110 Or 147, 222 P 301.

The phrase "before a hearing upon a motion or demurrer" meant the submission to the court for decision of a motion or demurrer. Ralston v. Stone, (1925) 113 Or 506, 232 P 631.

The words "commencement of trial of said cause" meant the trial of the merits of the issues presented by the pleadings. Western Athletic Club v. Thompson, (1942) 169 Or 514, 129 P2d 828.

The filing of an affidavit after the ex parte appointment of a receiver to preserve the value of the property, and before the case was at issue, was timely. Western Athletic Club v. Thompson, (1942) 169 Or 514, 129 P2d 828. **Distinguished in** Mursener v. Redding, (1945) 176 Or 617, 160 P2d 307.

An affidavit was too late when filed after the cause had been put at issue by the pleadings, after the appointment of a receiver, and after a stipulation of the parties and a resulting interlocutory decree whereby the court determined substantial contested issues. Id.

The filing of an affidavit after an ex parte hearing on a motion for a preliminary injunction did not render the subsequently issued order void, but only disqualified the judge from taking any further part. Forte v. Page, (1943) 172 Or 645, 143 P2d 669.

FURTHER CITATIONS: Shaughnessy v. Kimball, (1923) 106 Or 484, 212 P 483; Leonard v. Ekwall, (1928) 124 Or 351, 264 P 463; Hallett v. Hallett, (1936) 153 Or 63, 55 P2d 1143; State Capitol Reconstruction Comm. v. McMahan, (1939) 160 Or 83, 83 P2d 482; Gibbs v. Gladden, (1961) 227 Or 102, 359 P2d 540; Huffstutter v. Lind, (1968) 250 Or 295, 442 P2d 227; State v. Harrison, (1969) 253 Or 489, 455 P2d 613.

LAW REVIEW CITATIONS: 15 OLR 278; 35 OLR 3; 39 OLR 114.