

## Chapter 26

### Judgments and Decrees by Confession

#### 26.010 to 26.130

LAW REVIEW CITATIONS: 48 OLR 159.

#### 26.010

##### NOTES OF DECISIONS

A judgment or decree rendered with the consent of the defendant is binding on the parties because of their mutual assent and can only be attacked by an allegation of fraud in securing the consent. *Miller v. Bank of British Columbia*, (1868) 2 Or 291; *Schmidt v. Ore. Gold Min. Co.*, (1895) 28 Or 9, 40 P 406, 1014; *Dean v. Dean*, (1931) 136 Or 694, 300 P 1027, 86 ALR 79.

A judgment by confession is a final adjudication of the rights of the parties and can be enforced by execution as other judgments. *Allen v. Norton*, (1877) 6 Or 344; *Crow v. Crow*, (1914) 70 Or 534, 139 P 854.

A charge of fraud in procuring a judgment by confession should not be determined on motion and affidavits. *Miller v. Ore. City Mfg. Co.*, (1868) 3 Or 24.

There can be no inquiry into the consideration of the bond on which a judgment by confession is founded. *Allen v. Norton*, (1877) 6 Or 344.

A judgment is not void as an unlawful preference where entered upon confession in pursuance of a demand for some security by a creditor who knows that the debtor is insolvent. *O'Connell v. Hansen*, (1896) 29 Or 173, 179, 44 P 387.

A judgment cannot be directed for the defendant when in his answer he offers to permit judgment for plaintiff in a specified amount. *Easton v. Quackenbush*, (1917) 86 Or 374, 168 P 631.

This section does not authorize the court to grant alimony to the person at fault even though the parties consented to the decree. *Garner v. Garner*, (1948) 182 Or 549, 189 P2d 397.

FURTHER CITATIONS: *Willamette Real Estate Co. v. Hendrix*, (1896) 28 Or 485, 42 P 514, 52 Am St Rep 800; *Johnson v. Paulson*, (1917) 83 Or 238, 154 P 685, 163 P 435.

#### 26.020

##### NOTES OF DECISIONS

The president of a private corporation has power to confess judgment for the company. *Miller v. Bank of British Columbia*, (1868) 2 Or 291; *Miller v. Ore. City Mfg. Co.*, (1868) 3 Or 24.

A partner cannot confess judgment that shall be binding on his partner, or the partnership property, unless confession is made in an action pending. *Richardson v. Fuller*, (1866) 2 Or 179.

An attorney does not have authority to confess judgment against his client merely by virtue of his employment. *Galbraith v. Monarch Gold Dredging Co.*, (1939) 160 Or 282, 84 P2d 1110.

FURTHER CITATIONS: *English v. Savage*, (1875) 5 Or 518.

#### 26.030

##### NOTES OF DECISIONS

This provision does not apply to a voluntary confession of judgment without action pending. *Richardson v. Fuller*, (1866) 2 Or 179.

Unless there is an action pending, one partner has no authority to confess judgment that will be binding on his partner or the partnership property. *Id.*

#### 26.040

##### NOTES OF DECISIONS

After an action is brought the confession of judgment need not state the facts out of which the indebtedness arose. *Miller v. Bank of British Columbia*, (1868) 2 Or 291.

A statement made in open court by defendants and their attorney, "I think he is entitled to recover in this case" is not technically a decree of confession. *Johnson v. Paulson*, (1917) 83 Or 238, 154 P 685, 163 P 435.

This section should be read in connection with OC 2-1201 and 2-1202 [ORS 26.010 and 26.020]. *Galbraith v. Monarch Gold Dredging Co.*, (1939) 160 Or 282, 84 P2d 1110.

Unless an emergency exists an attorney does not have power to compromise his client's cause of action without the client's consent. *Id.*

No emergency existed, by virtue of which an attorney was authorized to confess judgment without express authorization by his client, when the attorney was unable to procure the attendance of witnesses. *Id.*

#### 26.110

##### NOTES OF DECISIONS

Unless an action is pending a partner has no tacit authority to confess judgment binding upon his co-partner and the partnership property. *Richardson v. Fuller*, (1866) 2 Or 179.

The entry of judgment nunc pro tunc as of the date of the confession has the same force as if made at the time when judgment was rendered, except as to persons in the position of bona fide purchasers. *Davidson v. Richardson*, (1907) 50 Or 323, 89 P 742, 91 P 1080, 128 Am St Rep 738, 17 LRA(NS) 319.

#### 26.120

##### NOTES OF DECISIONS

The statement of facts required by this section need not be made where the confession is in an action pending. *Miller v. Bank of British Columbia*, (1868) 2 Or 291; *Miller v. Ore. City Mfg. Co.*, (1868) 3 Or 24.

The sworn statement of confession of judgment ought to show where, and how much money was advanced, and under what circumstances it was advanced, and that the sum for which judgment is asked is due and owing. *Richardson v. Fuller*, (1866) 2 Or 179, 181.

NOTES OF DECISIONS

A judgment by confession on a contingent liability can be enforced by execution. *Allen v. Norton*, (1877) 6 Or 344.