

Chapter 51

Justice's Court Organization and Jurisdiction; Justices and Constables

51.010

NOTES OF DECISIONS

Jurisdiction once acquired remains until it is terminated in some legal manner. *Knapp, Burrell, & Co. v. King*, (1877) 6 Or 243.

Counsel are not presumed to sit continuously in the court. *Whittier v. Woods*, (1910) 57 Or 432, 112 P 408.

A justice of the peace cannot hold court outside his precinct. *In re Davenport*, (1925) 114 Or 650, 236 P 758.

FURTHER CITATIONS: *White v. Brown*, (1909) 54 Or 7, 101 P 900; *Whittier v. Woods*, (1910) 57 Or 432, 112 P 408.

ATTY. GEN. OPINIONS: When a "final adjournment" occurs so as to allow a disposition of money deposited as fines and forfeitures, 1944-46, p 78.

51.020

NOTES OF DECISIONS

The jurisdiction and authority of a justice of the peace within the City of Portland have been conferred upon the municipal court. *In re Shaw*, (1918) 88 Or 174, 171 P 896; *In re Application of Boalt*, (1927) 123 Or 1, 260 P 1004.

Extension of the city boundary to embrace certain precincts in one of which plaintiff justice resided did not affect his salary. *Shreve v. Webster*, (1910) 57 Or 221, 110 P 1091.

Justice of peace jurisdiction conferred in city charter enacted by special law is not withdrawn by this section. *Grayson v. State*, (1968) 249 Or 92, 436 P2d 261.

FURTHER CITATIONS: *Ex parte Douros*, (1920) 97 Or 39, 191 P 319.

ATTY. GEN. OPINIONS: Whether district can be established where there are no permanent residents, 1928-30, p 245; abolishing district when office is vacant and adding its territory to an existing district, 1940-42, p 474; power of county court to create justice of the peace districts, 1948-50, p 143; validity of proposed consolidation proceedings, 1950-52, p 390; authority of commissioners to abolish justice districts, 1966-68, p 181; abolishing office after election of a successor, 1966-68, p 277; authority of county court to reactivate justice district, (1971) Vol 35, p 586.

51.030

NOTES OF DECISIONS

Justice of peace jurisdiction conferred in city charter enacted by special law was not withdrawn by this section. *Grayson v. State*, (1968) 249 Or 92, 436 P2d 261.

ATTY. GEN. OPINIONS: Selection of constable for district court, 1960-62, p 168; constable districts for district courts, 1962-64, p 95; effect of establishment of district court on justice districts, 1966-1968, p 181.

51.040

NOTES OF DECISIONS

Assault and battery, not charged to have been committed with intent to commit a felony, is within concurrent jurisdiction of justice and circuit court. *State v. Sly*, (1872) 4 Or 277; *State v. Fetsch*, (1917) 85 Or 45, 165 P 1179.

Criminal libel is beyond justice's jurisdiction. *Wallowa County v. Oakes*, (1904) 46 Or 33, 78 P 892.

Criminal jurisdiction of the Municipal Court of Portland includes the crimes enumerated in this section. *State v. Browning*, (1905) 47 Or 470, 82 P 955.

The word "feloniously" in a complaint for assault and battery does not vitiate jurisdiction where it is surplusage. *Straub v. State*, (1927) 121 Or 451, 255 P 897.

This section does not confer jurisdiction over the crime of assault being armed with a dangerous weapon. *State v. Steagall*, (1958) 214 Or 116, 328 P2d 142.

FURTHER CITATIONS: *State v. Goodall*, (1916) 82 Or 329, 160 P 595; *State v. Chandler*, (1925) 113 Or 652, 234 P 266.

ATTY. GEN. OPINIONS: Jurisdiction to commit delinquent girls to state industrial school, 1922-24, p 386; jurisdiction in cases of wrongful taking of estrays, 1936-38, p 125; jurisdiction of violations of certain fish and game conservation laws, 1944-46, p 68.

51.050

CASE CITATIONS: *Nicklas v. Rathburn*, (1914) 69 Or 483, 139 P 567; *State v. Goodall*, (1916) 82 Or 329, 160 P 595; *State v. Chandler*, (1925) 113 Or 652, 234 P 266.

ATTY. GEN. OPINIONS: Violation of liquor control statutes, 1932-34, p 564; violation of barbering statutes, 1938-40, p 352; whether court has jurisdiction of offense of receiving stolen property, 1940-42, p 586; violation of fish and game conservation laws, 1942-44, p 406, 1944-46, p 68; jurisdiction to try commercial fishing violations, (1971) Vol 35, p 597.

51.060

NOTES OF DECISIONS

In assault and battery, not charged to have been committed with intent to commit a felony, the justice's court has concurrent jurisdiction with the circuit court. *State v. Sly*, (1872) 4 Or 277, 279; *State v. Fetsch*, (1917) 85 Or 45, 165 P 1179.

ATTY. GEN. OPINIONS: Jurisdiction to try commercial fishing violations, (1971) Vol 35, p 597.

51.080

NOTES OF DECISIONS

1. In general

The court is one of inferior and limited jurisdiction. *American Bldg. & Loan Assn. v. Fulton*, (1892) 21 Or 492, 28 P 636; *Evans v. Marvin*, (1915) 76 Or 540, 148 P 1119.

A justice's jurisdiction must appear on the record and will not be presumed. *Willits v. Walter*, (1898) 32 Or 411, 52 P 24; *Mulkey v. Day*, (1907) 49 Or 312, 89 P 957; *German Evangelical Church v. Schindler*, (1910) 56 Or 247, 108 P 178.

The ad damnum clause of the complaint, and not the amount of the judgment, determines the justice's jurisdiction. *Troy v. Hallgarth*, (1899) 35 Or 162, 57 P 374; *Ferguson v. Byers*, (1902) 40 Or 468, 67 P 1115, 69 P 32.

Interest antedating the judgment cannot be given when the amount awarded is \$250. *Ferguson v. Reiger*, (1903) 43 Or 505, 511, 73 P 1040; *Shreve v. Webster*, (1910) 57 Or 221, 110 P 1091.

A justice's court has no equitable jurisdiction. *McMahan v. Whelan*, (1904) 44 Or 402, 75 P 715; *Cohn v. Duntley*, (1933) 142 Or 186, 19 P2d 87.

The law abolishing justice courts in Portland, did not withdraw the jurisdiction of a justice of the peace conferred on the municipal court by Portland City Charter. In re *Shaw*, (1918) 88 Or 174, 171 P 896; *State v. Beveridge*, (1918) 88 Or 334, 171 P 1173; *Canuto v. Weinberger*, (1916) 79 Or 342, 346, 155 P 190; In re *Application of Boalt*, (1927) 123 Or 1, 260 P 1004.

Where the record on appeal does not show the amount for which plaintiff was suing in a justice's court, it may be assumed that the sum sued for did not exceed \$250. *Ford v. Henderson*, (1919) 91 Or 701, 178 P 381, 179 P 558.

2. Particular actions

Justices' courts have jurisdiction in replevin actions where the value of the property and the damages claimed do not exceed \$250. *Kirk v. Matlock*, (1885) 12 Or 319, 7 P 322; *Ferguson v. Byers*, (1902) 40 Or 468, 67 P 1115, 69 P 32.

Jurisdiction was upheld in an action to recover possession of a mining claim. *Duffy v. Mix*, (1893) 24 Or 265, 33 P 807.

Justices' courts and circuit courts have concurrent jurisdiction for forcible detainer. *Zelig v. Blue Point Oyster Co.*, (1909) 54 Or 543, 104 P 193.

FURTHER CITATIONS: *Noland v. Costello*, (1863) 2 Or 57; *Thompson v. Wolf*, (1877) 6 Or 308; *Malarkey v. O'Leary*, (1899) 34 Or 493, 50 P 521; *Beamish v. Noon*, (1915) 76 Or 415, 149 P 522; *Evans v. Marvin*, (1915) 76 Or 540, 148 P 1119, 1121.

51.090

NOTES OF DECISIONS

Jurisdiction was upheld in an action to recover possession of a mining claim. *Duffy v. Mix*, (1893) 24 Or 265, 33 P 807.

A justice's court is not ousted of jurisdiction in an action of forcible detainer if the complaint alleges and the answer admits the ownership of the land. *Heiney v. Heiney*, (1903) 43 Or 577, 73 P 1038.

FURTHER CITATIONS: *Shortess v. Wirt*, (1854) 1 Or 90; *Sweek v. Galbreath*, (1884) 11 Or 516, 6 P 220; *Aiken v. Aiken*, (1885) 12 Or 203, 6 P 682; *Malarkey v. O'Leary*, (1899) 34 Or 493, 496, 56 P 521; *German Evangelical Church v. Schindler*, (1910) 56 Or 247, 108 P 178; *Evans v. Marvin*, (1915) 76 Or 540, 148 P 1119, 1121; *McLean v. Sanders*, (1933) 143 Or 524, 23 P2d 321.

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NOTES OF DECISIONS

Justices' courts have jurisdiction in replevin irrespective of where the cause of action arose if other jurisdictional requisites are present. *Kirk v. Matlock*, (1885) 12 Or 319, 7 P 322; *Byers v. Ferguson*, (1902) 41 Or 77, 65 P 1067, 68 P 5.

An action cannot be prosecuted before a city recorder acting as a justice of the peace on process served by the city marshal in a precinct outside the city. *Craig v. Mosier*, (1868) 2 Or 323.

Personal service of summons in the county confers jurisdiction of an action commenced in a precinct therein, although the record does not show either party resided in such precinct. *Taylor v. Jenkins*, (1884) 11 Or 274, 3 P 681.

Appearance and trial without objection in a court to which a cause has been transferred waives all irregularities connected with changing the venue. *Woldenberg v. Haines*, (1899) 35 Or 246, 57 P 627.

A possessory action for a mining claim could not be maintained in a justice's court in a county other than that in which defendant was served by the sheriff of the latter. *Pierce v. Rock Creek Min. Co.*, (1900) 37 Or 342, 61 P 348.

FURTHER CITATIONS: *Evans v. Marvin*, (1915) 76 Or 540, 148 P 1119; *Weir v. Mariott*, (1931) 135 Or 214, 293 P 944, 295 P 449.

ATTY. GEN. OPINIONS: Jurisdiction in an action brought against resident of another county, 1942-44, p 303.

51.110

NOTES OF DECISIONS

The justice is not required to reduce the testimony of witnesses to writing in a criminal case. *Tyler v. State*, (1895) 28 Or 238, 42 P 518.

51.120

NOTES OF DECISIONS

Evidence taken in a justice's court of a criminal case is no part of the record. *Tyler v. State*, (1895) 28 Or 238, 42 P 518.

Where no request was made upon sureties upon an appeal undertaking to justify, they need not do so, and no entry concerning justification need be made on the docket. *Jacobs v. Oren*, (1897) 30 Or 593, 48 P 431.

A docket entry of issuance of summons is sufficient proof to support a writ of attachment. *Perry v. Gholson*, (1901) 39 Or 438, 65 P 601, 87 Am St Rep 685.

If appeal is taken by giving oral notice in open court, the justice should make the entry in his docket. *State v. Connolly*, (1907) 49 Or 406, 90 P 902.

A default judgment reciting defendant's failure to answer is valid although no docket entry was made of his failure to appear. *Stanley v. Rachofsky*, (1908) 50 Or 472, 93 P 354. *Overruling Guaranty Sav. & Loan Assn. v. Osburn*, (1901) 38 Or 568, 64 P 383.

Entering the date of issuing and returning the summons is not so drastic as to render a judgment void where it appears that a summons issued and was served such length of time before the judgment so as to justify the entry of a default. *Armstrong v. Travis*, (1920) 97 Or 587, 192 P 649.

ATTY. GEN. OPINIONS: Regarding fees and what constitutes a single docket entry, 1924-26, p 472.

51.210

NOTES OF DECISIONS

An enactment providing for one justice in each precinct is no prohibition to the appointment or election of as many more as the legislature may later provide. *Ryan v. Harris*, (1866) 2 Or 175.

FURTHER CITATIONS: *Shreve v. Webster*, (1910) 57 Or 221, 110 P 1091; *Webster v. Boyer*, (1916) 81 Or 485, 159 P 1166, Ann Cas 1918D, 988.

ATTY. GEN. OPINIONS: Termination of office of justice of the peace, 1966-68, p 181.

51.220

ATTY. GEN. OPINIONS: Right of justice of peace to become district judge when an increase in population causes creation of a district court during his term or after his election but before he takes office, 1950-52, p 82; discretion of incumbent justice of peace to become district judge, 1952-54, p 117.

51.240

ATTY. GEN. OPINIONS: Residence requirements of former statute for appointment of justice, 1926-28, p 366; appointment under former statute where there were no permanent residents, 1928-30, p 245; residence qualification for elective office of constable, 1956-58, p 33.

51.250

ATTY. GEN. OPINIONS: Liability for payment of premium of bond furnished, 1930-32, p 341; procedure when justice fails to take oath or give undertaking, 1934-36, p 87; effect of cancellation of bonds, 1940-42, P 368; procuring official bond from company for which the justice is the agent, 1964-66, p.104.

51.260

ATTY. GEN. OPINIONS: Effect of person elected failing to qualify, 1926-28, p 432; effect of cancellation of bond on office, 1940-42, p 385; legal capacity and rights of a justice of the peace whose appointment was unauthorized, 1950-52, p 72; creation of district court and termination of justice court when justice of the peace appointed, 1960-62, p 74; compensation during temporary appointment as justice of the peace, 1960-62, p 228; procedure, other than change of venue, when justice of the peace is disqualified, 1966-68, p 250.

51.270

ATTY. GEN. OPINIONS: Liability for payment of premium for bond furnished, 1930-32, p 341.

51.310

CASE CITATIONS: Bell v. Martin, (1913) 64 Or 519, 130 P 1126.

ATTY. GEN. OPINIONS: Necessity for a state agency to pay fees, 1934-36, p 670; collection of court costs by the justice of the peace, 1948-50, p 192; fee for filing transcripts of judgments transferred from one justice's court to another, 1956-58, p 70.

51.440

ATTY. GEN. OPINIONS: Selection of constable for district court, 1960-62, p 168; selection of constable, 1962-64, p 95.

51.450

ATTY. GEN. OPINIONS: Appointment of same person as constable for service of process in more than one justice of the peace district, 1948-50, p 282; residence qualification for elective office of constable, 1956-58, p 33.

51.460

ATTY. GEN. OPINIONS: Selection of constable for district court, 1960-62, p 168.

51.470

NOTES OF DECISIONS

A breach of the bond terms, must be alleged and proved, plus a showing of damages before recovery is allowed. Davis v. Hall, (1914) 72 Or 220, 143 P 893, Ann Cas 1916D, 922.

51.480

LAW REVIEW CITATION: 8 OLR 11, 31.

51.490

ATTY. GEN. OPINIONS: Selection of constable for district court, 1960-62, p 168; selection of constable, 1962-64, p 95.

51.500

CASE CITATIONS: Ruonala v. Bd. of County Commrs., (1957) 212 Or 309, 319 P2d 898.

51.530

ATTY. GEN. OPINIONS: Mileage for serving small claims, 1960-62, p 408.