Chapter 107

Dissolution, Annulment of Marriages; Separation; Conciliation Services

107.005

NOTES OF DECISIONS

Under former similar statute a marriage prohibited by ORS 106.020 would not be declared void if solemnized in some other state. Leefield v. Leefield, (1917) 85 Or 287, 116 P 953.

Under former similar statute plaintiff had to allege a "marriage" (not an "attempted marriage") before annulment was possible. Lahey v. Lahey, (1923) 109 Or 146, 219 P 807.

FURTHER CITATIONS: Holland v. Ribicoff, (1962) 219 F Supp 274.

LAW REVIEW CITATIONS: 2 WLJ 100.

107.015

NOTES OF DECISIONS

1. Under former similar statute

Sexual intercourse before marriage precluded an annulment on the ground of concealing pregnancy, regardless of paternity. Westfall v. Westfall, (1921) 100 Or 224, 197 P 271, 13 ALR 1428.

As a practical matter, an annulment of a voidable marriage had the same effect as a divorce. Dibble v. Meyer, (1955) 203 Or 541, 278 P2d 901, 280 P2d 765.

Death of either party terminated the right to bring an action for annulment of a voidable marriage. Id.

LAW REVIEW CITATIONS: 2 WLJ 100.

107.025

NOTES OF DECISIONS

1. Under former similar statute

An agreement between the parties to obtain a divorce or facilitate it by making no defense was void as contra bonos mores. Phillips v. Thorp, (1883) 10 Or 494; Hodler v. Hodler, (1920) 95 Or 180, 185 P 241, 187 P 604.

Divorce jurisdiction was required to be administered in view of the public good, as well as of private rights. Adams v. Adams, (1885) 12 Or 176, 6 P 677; Jones v. Jones, (1911) 59 Or 308, 117 P 414.

Divorces were granted solely upon statutory grounds. Wheeler v. Wheeler, (1889) 18 Or 261, 24 P 900; Jones v. Jones, (1911) 59 Or 308, 117 P 414; Leefield v. Leefield, (1917) 85 Or 287, 166 P 953; Lakson v. Lakson, (1928) 124 Or 219, 263 P 891; Billion v. Billion, (1928) 124 Or 415, 263 P 397.

A divorce would not be granted when sought primarily to secure property rights. Adams v. Adams, (1885) 12 Or 176, 6 P 677.

Though the state was interested in preserving the marriage relations of its citizens, the legislature had conferred the right to a divorce for the causes named in the former statute. Steiwer v. Steiwer, (1924) 112 Or 485, 230 P 359.

Court did not lose jurisdiction by referring divorce case to referee for taking testimony. Id.

Plaintiff had to prove the marriage, residence of plaintiff in state for one year and the alleged ground of suit. Stewart v. Stewart, (1926) 117 Or 157, 242 P 852.

It was error to grant divorce unless statutory grounds were established by clear and satisfactory evidence, since the policy of law was to uphold marriages. Lakson v. Lakson, (1928) 124 Or 219, 263 P 891.

The power of a divorce court was determined and limited by statute. Zipper v. Zipper, (1951) 192 Or 568, 235 P2d 866.

A divorce court could not amend, revise or vacate a decree after the expiration of the term in which it was rendered, unless power to affect the decree was reserved. Id.

FURTHER CITATIONS: Smith v. Smith, (1874) 5 Or 186; Smith v. Smith, (1879) 8 Or 100; McMahan v. McMahan, (1881) 9 Or 525; Rickard v. Rickard, (1881) 9 Or 168; Hall v. Hall, (1881) 9 Or 452; Cline v. Cline, (1882) 10 Or 474; Taylor v. Taylor, (1884) 11 Or 303, 8 P 354; Boon v. Boon, (1885) 12 Or 437, 8 P 450; Dodd v. Dodd, (1886) 14 Or 338, 13 P 509; Eggerth v. Eggerth, (1888) 15 Or 626, 16 P 650; Herberger v. Herberger, (1888) 16 Or 327, 14 P 70; Sisemore v. Sisemore, (1889) 17 Or 542, 21 P 820; McBee v. McBee, (1892) 22 Or 329, 29 P 887, 29 Am St Rep 613; Beckley v. Beckley, (1892) 23 Or 226, 31 P 470; Hill v. Hill, (1893) 24 Or 416, 418, 33 P 809; Crow v. Crow, (1896) 29 Or 392, 45 P 761; Ryan v. Ryan, (1896) 30 Or 226, 47 P 101; Nickerson v. Nickerson, (1898) 34 Or 1, 48 P 423, 54 P 277; O'Brien v. O'Brien, (1900) 36 Or 92, 57 P 374, 58 P 892; Mendelson v. Mendelson, (1900) 37 Or 163, 61 P 645; Ogilvie v. Ogilvie, (1900) 37 Or 171, 61 P 627; Earle v. Earle, (1903) 43 Or 293, 72 P 976; Hall v. Hall, (1903) 43 Or 619, 75 P 141; Benfield v. Benfield, (1903) 44 Or 94, 74 P 495; Mills v. Mills, (1905) 47 Or 246, 83 P 390; Galigher v. Galigher, (1907) 49 Or 155, 89 P 146.

Ellis v. Ellis, (1908) 51 Or 96, 93 P 1134; Laycock v. Laycock, (1908) 52 Or 610, 98 P 487; Andrews v. Andrews, (1909) 53 Or 531, 99 P 938; Decker v. Decker, (1910) 56 Or 381, 108 P 777; Folkenberg v. Folkenberg, (1911) 58 Or 267, 114 P 99; Luper v. Luper, (1912) 61 Or 418, 96 P 1099; Short v. Short, (1912) 62 Or 118, 123 P 388; Miller v. Miller, (1913) 65 Or 551, 131 P 308, 133 P 86; Crim v. Crim, (1913) 66 Or 258, 134 P 13; Cunningham v. Coos, (1914) 70 Or 420, 141 P 1019; Perkins v. Perkins, (1914) 72 Or 302, 143 P 995; Matlock v. Matlock, (1914) 72 Or 330, 143 P 1010; Coe v. Coe, (1915) 75 Or 145, 145 P 674; Spady v. Spady, (1916) 79 Or 421, 155 P 169; Hague v. Hague, (1916) 79 Or 646, 156 P 277; Waterman v. Waterman, (1916) 80 Or 511, 157 P 791; Smythe v. Smythe, (1916) 80 Or 150, 149 P 516, 156 P 785, Ann Cas 1918D, 1094; Herschback v. Herschback, (1916) 81 Or 151, 158 P 526; Belmont v. Belmont, (1917) 82 Or 612, 162 P 830; Coos v. Coos, (1917) 82 Or 693, 162 P 860; Hengen v. Hengen, (1917) 85 Or 155, 166 P 525; Mosier v. Mosier, (1918) 89 Or 477, 174 P 732; Wilhelm v. Wilhem, (1918) 90 Or 435, 177 P 57; Crumbley v. Crumbley, (1920) 94 Or 617, 186 P 423; Steele v. Steele, (1920) 96 Or 630, 190 P 716; Bowers v. Bowers, (1921) 98 Or 548, 194 P 697; Baker

v. Baker, (1921) 99 Or 213, 195 P 347; White v. White, (1921) 100 Or 387, 190 P 969, 197 P 1080; Hansen v. Hansen, (1922) 103 Or 17, 198 P 207, 203 P 613; Saville v. Saville, (1922) 103 Or 117, 203 P 584.

Jenkins v. Jenkins, (1922) 103 Or 208, 204 P 165; Kruschke v. Kruschke, (1922) 103 Or 601, 205 P 973; Carmichael v. Carmichael, (1923) 106 Or 198, 211 P 917; Schoren v. Schoren, (1924) 110 Or 272, 214 P 885, 222 P 1096; Kaadt v. Kaadt, (1924) 110 Or 573, 223 P 934; Vinson v. Vinson, (1924) 111 Or 634, 226 P 233; Cain v. Cain, (1924) 111 Or 272, 226 P 230; McCallister v. McCallister, (1924) 113 Or 124, 229 P 687; Condit v. Condit, (1925) 115 Or 481, 237 P 360; Heinemann v. Heinemann, (1926) 118 Or 178, 245 P 1082; Blair v. Blair, (1928) 124 Or 611, 265 P 415; Thomsen v. Thomsen, (1929) 128 Or 622, 275 P 673; Jerman v. Jerman, (1929) 129 Or 402, 275 P 915; Meadows v. Meadows, (1930) 132 Or 228, 283 P 1117; Josephson v. Josephson, (1930) 132 Or 581, 287 P 80; Arndt v. Arndt, (1934) 146 Or 347, 25 P2d 1118, 30 P2d 1; Smith v. Smith, (1934) 146 Or 600, 31 P2d 168; Maurer v. Maurer, (1935) 150 Or 130, 42 P2d 186; Heisler v. Heisler, (1936) 152 Or 691, 55 P2d 727; Dietz v. Dietz, (1937) 158 Or 13, 72 P2d 60; Neely v. Neely, (1939) 162 Or 610, 94 P2d 300; Goodman v. Goodman, (1940) 165 Or 141, 105 P2d 1091; Mueller v. Mueller, (1940) 165 Or 153, 105 P2d 1095; Metcalf v. Metcalf, (1941) 166 Or 644, 114 P2d 547; Pearson v. Pearson, (1943) 172 Or 88, 139 P2d 564; Fritz v. Fritz, (1946) 179 Or 612, 174 P2d 169; Brust v. Brust, (1947) 181 Or 307, 181 P2d 632; Parks v. Parks, (1947) 182 Or 322, 187 P2d 145; Miller v. Miller, (1948) 183 Or 186, 191 P2d 394; Bothe v. Bothe, (1948) 183 Or 237, 192 P2d 256; Brennan v. Brennan, (1948) 183 Or 269, 192 P2d 858; Kilborn v. Kilborn, (1948) 185 Or 13, 200 P2d 603; Vosmek v. Vosmek, (1949) 186 Or 80, 204 P2d 1064; Riesland v. Riesland, (1949) 186 Or 227, 206 P2d 96; Goldson v. Goldson, (1949) 187 Or 206, 210 P2d 478; Flanagan v. Flanagan, (1950) 188 Or 126, 213 P2d 801; Guinn v. Guinn, (1950) 188 Or 554, 217 P2d 248; Steiner v. Steiner, (1950) 189 Or 97, 218 P2d 464.

Weatherspoon v. Weatherspoon, (1952) 195 Or 660, 246 P2d 581; Parsons v. Parsons, (1953) 197 Or 420, 253 P2d 914; Leahy v. Leahy, (1956) 208 Or 659, 303 P2d 952; Gibson v. Gibson, (1959) 216 Or 622, 340 P2d 190; Nelson v. Nelson, (1960) 221 Or 117, 350 P2d 702; Zavin v. Zavin, (1961) 229 Or 289, 366 P2d 733; Moreland v. Moreland, (1962) 232 Or 309, 374 P2d 741, 375 P2d 242; Mowery v. Mowery, (1964) 238 Or 66, 393 P2d 191; Squier v. Squier, (1964) 238 Or 191, 394 P2d 83; Azorr v. Azorr, (1965) 240 Or 633, 403 P2d 777; Hoss v. Hoss, (1966) 245 Or 1, 419 P2d 940; Weinstein v. Weinstein, (1967) 246 Or 389, 425 P2d 544; Goode v. Goode, (1970) 4 Or App 34, 476 P2d 805; Parker v. Parker, (1971) 4 Or App 365, 479 P2d 528.

ATTY. GEN. OPINIONS: Fees for divorce proceedings, 1924-26, p 283; sufficiency of evidence of mental suffering, 1944-46, p 361; liability of physician performing abortion without consent of husband, (1969) Vol 34, p 574.

LAW REVIEW CITATIONS: 8 OLR 82; 13 OLR 335; 19 OLR 341; 25 OLR 63; 28 OLR 403; 31 OLR 62; 35 OLR 37; 43 OLR 106-109; 2 WLJ 148-171.

107.046

NOTES OF DECISIONS

1. Under former similar statute

Where divorce was granted, notice of appeal did not need to be given to district attorney. De Foe v. De Foe, (1918) 88 Or 549, 169 P 128, 172 P 980; Parman v. Parman, (1919) 94 Or 307, 180 P 906, 185 P 922.

Since state was considered a party, it was the policy of the court not to waive any of the statutory requirements as to divorce. Parrish v. Parrish, (1908) 52 Or 160, 96 P 1066.

Where suit for divorce was dismissed and defendant did not appear, district attorney had to be notified of appeal. Keeley v. Keeley, (1920) 97 Or 596, 192 P 490.

State could appeal from decree where district attorney was not served and did not waive service. Smythe v. Smythe, (1916) 80 Or 150, 149 P 516, 156 P 785, Ann Cas 1918D, 1094.

Whenever defendant defaulted or neglected to defend in good faith, district attorney was required to make defense. Lahey v. Lahey, (1923) 109 Or 146, 219 P 807.

It was proper for the terms and conditions of the commencement of a divorce proceeding to be absolutely prescribed by the state. Wright v. Beveridge, (1927) 120 Or 244, 251 P 895.

Where the findings omitted mention of an appearance by the state, they could be corrected after the term to show the appearance where the deputy district attorney actually appeared, though not served with summons. Costello v. Costello, (1927) 120 Or 439, 251 P 303.

Ex parte correction of record to show actual date of service upon district attorney did not invalidate a divorce decree. Geis v. Gallus, (1929) 130 Or 619, 278 P 969.

FURTHER CITATIONS: Earle v. Earle, (1903) 43 Or 293, 72 P 976; Hooper v. Hooper, (1913) 67 Or 187, 135 P 205, 525; Orr v. Orr, (1915) 74 Or 137, 144 P 753, 146 P 964; Jacobs v. Jacobs, (1916) 79 Or 143, 154 P 749; Crim v. Crim, (1916) 80 Or 88, 155 P 175, 155 P 1176; Smythe v. Smythe, (1916) 80 Or 150, 149 P 516, 156 P 785, Ann Cas 1918D, 1094; Re Estate of Stewart, (1924) 110 Or 408, 223 P 727; Lakson v. Lakson, (1928) 124 Or 219, 263 P 891; State v. Farrell, (1944) 175 Or 87, 151 P2d 636; Hinckley v. Hinckley, (1957) 211 Or 32, 295 P2d 1105, 312 P2d 588; Burke v. Burke, (1959) 216 Or 691, 340 P2d 948; Swint v. Swint, (1964) 238 Or 367, 395 P2d 114; Swint v. Brugger, (1966) 243 Or 473, 414 P2d 433; Kelso v. Kelso, (1969) 254 Or 130, 458 P2d 448.

ATTY. GEN. OPINIONS: Authority of district attorney or deputy to act as private attorney in divorce suit, 1922-24, p 806, 1942-44, p 37, 1944-46, p 275; appearance of district attorney in suit for separation, 1942-44, p 128; relief by district attorney from decree with no maintenance provision for insane wife, 1942-44, p 233; duty of district attorney to defend, 1944-46, p 361; waiver of appearance by district attorney in a divorce action terminating a three-week marriage, 1948-50, p 440; service of complaint upon district attorney, 1950-52, p 300; propriety of district attorney representing a divorced person in an action enforcing a property settlement, 1954-56, p 13.

LAW REVIEW CITATIONS: 1 OLR 93; 3 OLR 344; 35 OLR 36.

107.055

CASE CITATIONS: Atteberry v. Atteberry, (1880) 8 Or 224; Jacobsen v. Jacobsen, (1884) 11 Or 454, 5 P 567; Rice v. Rice, (1886) 13 Or 337, 10 P 495; Eggerth v. Eggerth, (1888) 15 Or 626, 16 P 650; Hill v. Hill, (1893) 24 Or 416, 33 P 809; Earle v. Earle, (1903) 43 Or 293, 72 P 976; Laycock v. Laycock, (1908) 52 Or 610, 98 P 487; Jones v. Jones, (1911) 59 Or 308, 117 P 414; State v. Ayles, (1914) 74 Or 153, 145 P 19; DeFoe v. DeFoe, (1918) 88 Or 549, 169 P 128, 172 P 980; Saville v. Saville, (1922) 103 Or 117, 203 P 584; Kruschke v. Kruschke, (1922) 103 Or 601, 205 P 973; Jenkins v. Jenkins, (1926) 119 Or 292, 247 P 145, 248 P 1095; Amend v. Amend, (1931) 135 Or 550, 296 P 875, 76 ALR 986; Arndt v. Arndt, (1934) 146 Or 347, 25 P2d 1118, 30 P2d 1; Claude v. Claude, (1946) 180 Or 62, 174 P2d 179; Brennan v. Brennan, (1948) 183 Or 269, 192 P2d 858; Hollingsworth v. Hollingsworth, (1951) 191 Or 374, 229 P2d 956; McKee v. McKee, (1962) 232 Or 377, 375 P2d 826; State ex rel. Pearcy v. Long, (1963) 234 Or 630, 383 P2d 377.

LAW REVIEW CITATIONS: 13 OLR 335; 19 OLR 341; 35 OLR 33, 37; 2 WLJ 148-171, 183-206.

107.065

LAW REVIEW CITATIONS: 37 OLR 81; 43 OLR 101.

107.075

NOTES OF DECISIONS

1. Under former similar statute

If the marriage was not solemnized in this state, a party had no right of suit until he had a year's residence in Oregon. Jacobsen v. Jacobsen, (1884) 11 Or 454, 5 P 567; Parrish v. Parrish, (1908) 52 Or 160, 96 P 1066.

The words "resident" and "inhabitant" were used interchangeably in the former statute. Stewart v. Stewart, (1926) 117 Or 157, 242 P 852; Zimmerman v. Zimmerman, (1945) 175 Or 585, 155 P2d 293.

Allegations that plaintiff married defendant in Oregon and now resides there were insufficient. Parrish v. Parrish, (1908) 52 Or 160, 96 P 1066.

Bringing suit for divorce elsewhere and swearing to residence there was not conclusive that Oregon was not domicile. Miller v. Miller, (1913) 67 Or 359, 136 P 15.

Registering in Oregon and then voting elsewhere was not conclusive that Oregon was not domicile. Id.

A wife, whose husband by his misconduct had rendered life with him unbearable, could acquire a separate domicile, on which basis she could institute a divorce suit. Miller v. Miller, (1913) 67 Or 359, 136 P 15.

Plaintiff's residence for one year was essential, and failure to so allege was fatal, invalidating the decree. Holton v. Holton, (1913) 64 Or 290, 129 P 532, 48 LRA(NS) 779.

Allegation that plaintiff had been a "resident" of Oregon ever since the marriage of the parties was sufficient to give the court jurisdiction. Noble v. Noble, (1920) 97 Or 497, 190 P 1061.

An allegation that plaintiff was a resident of a certain county and had resided therein for more than one year prior to filing the complaint was sufficient, though unskillful. Koski v. Koski, (1939) 161 Or 446, 90 P2d 183.

The words "residence" or "inhabitant" were construed to mean domicile. Zimmerman v. Zimmerman, (1945) 175 Or 585, 155 P2d 293.

Serviceman stationed in Oregon was not a domiciliary of this state. Zimmerman v. Zimmerman, (1945) 175 Or 585, 155 P2d 293.

Motor vehicle and voter registration might or might not have a bearing upon domiciliary intent. Volmer v. Volmer, (1962) 231 Or 57, 371 P2d 70.

There had to be unequivocal evidence of intent beyond mere physical presence in Oregon to establish residence of a soldier. Id.

FURTHER CITATIONS: Noble v. Noble, (1920) 97 Or 497, 190 P 1061; Schwindt v. Schwindt, (1961) 227 Or 354, 362 P2d 333.

LAW REVIEW CITATIONS: 1 OLR 93; 3 OLR 344; 8 OLR 11; 30 OLR 251; 2 WLJ 121-129.

107.095

NOTES OF DECISIONS

1. Under former similar statute
   (1) Suit money and maintenance
   (2) Custody awards
   (3) "Restraining or enjoining husband or wife"
   (4) Judgments; enforcement and modification; foreign decrees
   (5) Appeals

1. Under former similar statute

(1) Suit money and maintenance. The power to grant suit money was statutory and limited by statute. Aldrich v. Aldrich, (1929) 129 Or 111, 276 P 267; Carlton v. Carlton, (1937) 156 Or 36, 65 P2d 1417; State v. Tolls, (1939) 160 Or 317, 85 P2d 366, 119 ALR 1370; Goodman v. Goodman, (1940) 165 Or 141, 105 P2d 1091.

Allowance of attorney's fee to wife was within sound discretion of court. Billion v. Billion, (1927) 122 Or 68, 256 P 389; Jerman v. Jerman, (1929) 129 Or 402, 275 P 915; Blake v. Blake, (1934) 147 Or 43, 31 P2d 768.

Allowances for suit money had to be made after commencement of suit and before the decree. Crim v. Crim, (1916) 80 Or 88, 155 P 175; Hengen v. Hengen, (1917) 85 Or 155, 166 P 525; Billion v. Billion, (1927) 122 Or 68, 256 P 389; Aldrich v. Aldrich, (1929) 129 Or 111, 276 P 267; Goodman v. Goodman, (1940) 165 Or 141, 105 P2d 1091.

Allowances for suit money had to be made before decree but could be incorporated in decree. Carlton v. Carlton, (1937) 156 Or 33, 65 P2d 1417; State v. Tolls, (1939) 160 Or 317, 85 P 2d 366, 119 ALR 1370; Goodman v. Goodman, (1940) 165 Or 141, 105 P2d 1091.

On opening a default decree to let in defense, order to pay defendant's travel expenses with provisions guarding against diverting the money to any other purpose was proper. Smith v. Smith, (1871) 3 Or 363.

Temporary alimony could be granted pendente lite. Houston v. Timmerman, (1889) 17 Or 499, 21 P 1037, 11 Am St Rep 848, 4 LRA 716.

In independent suit by husband seeking modification of alimony decree, court could not direct husband to pay wife's attorney's fees. Corder v. Speake, (1898) 37 Or 105, 51 P 647.

Even though defendant was under guardianship, plaintiff could be granted suit money and support pending the divorce proceedings. Sturgis v. Sturgis, (1908) 51 Or 10, 93 P 696, 131 Am St Rep 724, 15 LRA(NS) 1034.

A husband was properly required to furnish means to the wife to prosecute a divorce suit, if she was without means, and he was able. Jones v. Jones, (1911) 59 Or 308, 117 P 414.

Husband had to pay attorney expenses although court order was for services already rendered. Taylor v. Taylor, (1914) 70 Or 510, 134 P 1183, 140 P 999.

Court could compel husband plaintiff to pay attorney costs before granting him nonsuit. Id.

Allowing additional suit money in final decree dismissing complaint and cross-complaint for divorce was error. Thomsen v. Thomsen, (1926) 118 Or 614, 228 P 832, 245 P 502, 247 P 808.

Husband's liability for support of adopted child was same as for child born of marriage. Wertz v. Wertz, (1928) 125 Or 53, 263 P 911.

The power to grant suit money extended to suits for separate maintenance. Id.

Attorney's fees could be allowed only to a wife and not in favor of the attorney. Carlton v. Carlton, (1937) 156 Or 33, 65 P2d 1417.

The legislative intent was sufficiently clear to authorize support for children pendente lite. Noble v. Noble, (1940) 164 Or 538, 103 P2d 293.

By the express wording of this section, it was mandatory that whatever allowances were made had to be made prior to final decree — a trial judge's memorandum not filed as an order was insufficient, where a stipulation by the parties did not provide that the trial court might determine the allowance and incorporate the same into the final decree. Pachkofsky v. Pachkofsky, (1951) 192 Or 627, 236 P2d 320.

Accepting payment of attorney's fee by wife prior to entry of decree of divorce from which she had appealed did not amount to waiver of her right to appeal. Hinckley v. Hinckley, (1956) 211 Or 32, 295 P2d 1105, 312 P2d 588.

Allowance of additional attorney's fees and judgment for delinquent support payments were properly included in decree granted defendant in cross-suit for separation from bed and board. Oliver v. Oliver, (1959) 216 Or 5, 337 P2d 318.

Contingent fee contracts in divorce proceedings were invalid. Hay v. Erwin, (1966) 244 Or 488, 419 P2d 32.

(2) Custody awards. Award of custody pendente lite could be modified in final decree without a showing of a change in circumstances. Cooley v. Cooley, (1969) 1 Or App 223, 461 P2d 65.

(3) "Restraining or enjoining husband or wife." When it reasonably appeared that the restraining order would not be effective, the divorce court, to preserve or protect the property, could appoint a receiver. Grayson v. Grayson, (1960) 222 Or 507, 352 P2d 738.

(4) Judgments; enforcement and modification; foreign decrees. Failure to pay into court a sum ordered for spouse's defense in divorce suit was not contempt when due to inability to raise money and not to disobedience. Newhouse v. Newhouse, (1886) 14 Or 290, 12 P 422.

A decree for future monthly payments for support under the further order of the court was not a definite liability or a judgment which could become a lien. Mansfield v. Hill, (1910) 56 Or 400, 107 P 471, 108 P 1007.

If the court costs and attorney fees were not paid before decree, the court could render such judgment or order in the case as might be necessary to enforce the order for suit money. Jones v. Jones, (1911) 59 Or 308, 117 P 414.

A stipulated alimony settlement could be modified by court on remarriage of wife unless alimony was in lieu of her claim to property. Phy v. Phy, (1925) 116 Or 31, 236 P 751, 240 P 237, 42 ALR 588.

Where husband by affidavit pleaded inability to pay temporary alimony, court action in holding him in contempt and denying him further participation in trial, was denial of due process of law, violating U.S. Const., Am. 14, §1. Hutchinson v. Hutchinson, (1928) 126 Or 519, 270 P 484, 62 ALR 660.

An order for the payment of suit money and counsel fees did not constitute a judgment or decree in equity for the payment of money on which an execution could issue, nor did it create a lien on the property of the husband. State v. Tolls, (1939) 160 Or 317, 85 P2d 366, 119 ALR 1370.

An order decreeing accrued payments of alimony to be a final judgment and ordering the clerk to docket the same was a mere personal order, enforceable only by contempt proceedings. Id.

(5) Appeals. Allowance of attorney's fees was not subject to review unless discretion was abused. Taylor v. Taylor, (1914) 70 Or 510, 134 P 1183, 140 P 999; Costello v. Costello, (1927) 120 Or 439, 251 P 303.

An order for suit money could not be appealed until final decree in divorce suit was granted. Clay v. Clay, (1910) 56 Or 538, 108 P 119, 109 P 129; Koester v. Koester, (1928) 125 Or 60, 253 P 12.

Although maintenance decree was appealable, Supreme Court had no original jurisdiction to grant maintenance money pending a decree on appeal. O'Brien v. O'Brien, (1889) 36 Or 92, 57 P 374, 58 P 892; Taylor v. Taylor, (1914) 70 Or 510, 134 P 1183, 140 P 999; White v. White, (1920) 100 Or 387, 190 P 969, 197 P 1080; La Follett v. La Follett, (1932) 138 Or 411, 2 P2d 1109, 6 P2d 1085.

Where judgment finding husband in contempt for not obeying support order was appealed circuit court could grant wife suit allowance for defense of appeal since original divorce proceeding was still pending. State v. La Follett, (1930) 132 Or 556, 287 P 82.

FURTHER CITATIONS: Taylor v. Taylor, (1909) 54 Or 560, 103 P 524; Hansen v. Hansen, (1922) 103 Or 17, 198 P 207, 203 P 613; State v. Manchester, (1941) 167 Or 250, 115 P2d 181; State v. Casey, (1944) 175 Or 329, 153 P2d 700; Nelson v. Nelson, (1947) 180 Or 275, 176 P2d 648; Edwards v. Edwards, (1951) 191 Or 285, 229 P2d 652.; Esselstyn v. Casteel, (1955) 205 Or 344, 286 P2d 665, 288 P2d 214, 215; Anderson v. Anderson, (1962) 232 Or 160, 374 P2d 479.

107.105

NOTES OF DECISIONS

1. In general
(1) Under former similar statute
2. Custody
(1) Under former similar statute
3. Award for maintenance of minor children
(1) Under former similar statute
4. Award for maintenance of spouse
(1) Under former similar statute
5. Award of personal property
(1) Under former similar statute
6. Costs and attorney fees
(1) Under former similar statute
7. Judgments; contempt and appeal
(1) Under former similar statute
8. Foreign decrees
(1) Under former similar statute
9. Liability of estate for maintenance payments
(1) Under former similar statute
10. Disposition of property
(1) Under former similar state
(a) In general
(b) Property subject to statute

1. In general

(1) Under former similar statute. Only when a decree was granted dissolving or declaring void the marriage, did the statute apply. Taylor v. Taylor, (1914) 70 Or 510, 134 P 1183, 140 P 999; Hengen v. Hengen, (1917) 85 Or 155, 166 P 525; Rodda v. Rodda, (1949) 185 Or 140, 200 P2d 616, 202 P2d 638, cert. denied, 337 US 946, 69 S Ct 1504, 93 L Ed 1749.

Liberal construction was given to provisions governing care and custody of minor children of divorced parents. Wells v. Wells-Crawford, (1927) 120 Or 557, 251 P 263, 251 P 907.

The court had no interest in the parties after decree of divorce was absolute except to require compliance therewith, and it retained jurisdiction for that purpose. Ward v. Ward, (1937) 156 Or 686, 68 P2d 763, 69 P2d 963.

The statute was a substitute for the common-law obligation of the husband to support his wife and children. Warrington v. Warrington, (1939) 160 Or 77, 83 P2d 479.

A divorce court had no authority to compensate the party at fault for loss of earnings occasioned by the marriage. Steiner v. Steiner, (1950) 189 Or 97, 218 P2d 464.

It was reversible error to refuse to permit children of the parties to testify. Schafer v. Schafer, (1966) 243 Or 242, 412 P2d 793.

2. Custody

(1) Under former similar statute. The party not at fault was required to be given custody of minor children unless manifestly an improper person for custody. Jackson v. Jackson, (1880) 8 Or 402; Lambert v. Lambert, (1888) 16 Or 485, 19 P 459; Sachs v. Sachs, (1933) 145 Or 23, 25 P2d 159, 26 P2d 780; VanDoozer v. VanDoozer, (1947) 181 Or 274, 181 P2d 126. **But see** Wengert v. Wengert, (1956) 208 Or 290, 301 P2d 190.

The welfare of the children was the major consideration in determining custody. Lambert v. Lambert, (1888) 16 Or 485, 19 P 459; Johnson v. Johnson, (1921) 102 Or 407, 202 P 722; Rasmussen v. Rasmussen, (1925) 113 Or 146, 231 P 964; Henry v. Henry, (1937) 156 Or 679, 69 P2d 280; Cripe v. Cripe, (1949) 186 Or 502, 207 P2d 1049.

The party not at fault was preferred but child could go to party in fault. Matthews v. Matthews, (1912) 60 Or 451, 119 P 766; Wells v. Wells-Crawford, (1927) 120 Or 557, 251 P 263, 251 P 907; Henry v. Henry, (1937) 156 Or 679, 69 P2d 280; Norcross v. Norcross, (1945) 176 Or 1, 155 P2d 562; McFadden v. McFadden, (1956) 206 Or 253, 292 P2d 795. **But see** Wengert v. Wengert, (1956) 208 Or 290, 301 P2d 190.

Generally, unless unfit, the mother was better entitled to custody of child of tender years even though husband was granted divorce. Sachs v. Sachs, (1933) 145 Or 23, 25 P2d 159, 26 P2d 780; Layton v. Layton, (1944) 174 Or 463, 149 P2d 574; Leverich v. Leverich, (1944) 175 Or 174, 152 P2d 303; Norcross v. Norcross, (1945) 176 Or 1, 155 P2d 562; Richardson v. Richardson, (1947) 182 Or 141, 186 P2d 398; Kloster v. Kloster, (1950) 187 Or 683, 213 P2d 448.

The award of custody of children would not be disturbed on appeal when the case was purely one of fact and the evidence was sufficient to warrant the trial court's conclusion. Henry v. Henry, (1937) 156 Or 679, 69 P2d 280; Kroll v. Kroll, (1965) 241 Or 576, 407 P2d 643; Stonebrink v. Stonebrink, (1970) 2 Or App 328, 468 P2d 546.

Court was required to award custody of child to some person within a reasonable length of time. Watson v. Watson, (1958) 213 Or 182, 323 P2d 335; Christy v. Christy, (1966) 244 Or 575, 419 P2d 425; Stonebrink v. Stonebrink, (1970) 2 Or App 328, 468 P2d 546.

Any moral transgressions of the mother had to be considered together with other relevant factors, in determining what was best for the child. Shrout v. Shrout, (1960) 224 Or 521, 356 P2d 935; Pachkofsky v. Pachkofsky, (1951) 192 Or 627, 236 P2d 320; Pick v. Pick, (1952) 197 Or 74, 251 P2d 472; Gibson v. Gibson, (1952) 196 Or 198, 247 P2d 757; Laurence v. Laurence, (1953) 198 Or 630, 258 P2d 784; Wilson v. Wilson, (1953) 199 Or 263, 260 P2d 952; Wengert v. Wengert, (1956) 208 Or 290, 301 P2d 190; Read v. Read, (1961) 229 Or 113, 366 P2d 164; Osko v. Osko, (1962) 230 Or 247, 369 P2d 737; Kroll v. Kroll, (1965) 241 Or 576, 407 P2d 643. Shrout v. Shrout, supra, overruling Goldson v. Goldson, (1949) 192 Or 611, 236 P2d 314.

In determining the best interest of the child, the court was required to consider all relevant factors, which generally included: (1) The conduct of the parties; (2) the moral, emotional and physical fitness of the parties; (3) the comparative physical environments; (4) the emotional ties of the child to other family members; (5) the interest of the parties in, and attitude toward the child; (6) the age, sex, and health of the child; (7) the desirability of continuing an existing relationship and environment; and (8) the preference of the child. Tingen v. Tingen, (1968) 251 Or 458, 446 P2d 185; Burzynski v. Burzynski, (1970) 2 Or App 459, 468 P2d 548.

The mere fact that the care of the children was awarded to the party at fault raised no presumption of error. Pittman v. Pittman, (1870) 3 Or 553.

A fit father was preferred to a maternal grandfather. Jackson v. Jackson, (1880) 8 Or 402.

A decree of divorce which failed to provide for the care and custody of minor children was defective although statute was permissive. Boon v. Boon, (1885) 12 Or 437, 8 P 450.

Evidence supported award of custody of young boy to grandfather in preference to mother or father. Lambert v. Lambert, (1888) 16 Or 485, 19 P 459.

A divorced wife, if fit, was entitled to custody of her minor child, though the husband's stepmother was better able pecuniarily to care for it. Gustin v. Gustin, (1911) 59 Or 26, 116 P 1072.

The father's greater financial ability did not entitle him to custody where he was at fault. McKay v. McKay, (1915) 77 Or 14, 149 P 1032.

The failure of record to disclose any evidence of father's fitness or mother's unfitness, where mother won divorce on cross-complaint and father was awarded custody of young daughter, necessitated reversal of custody award. Leon v. Leon, (1916) 79 Or 347, 155 P 189.

Court could adopt stipulation of parties as to custody of children. Ward v. Ward, (1937) 156 Or 686, 68 P2d 763, 69 P2d 963.

Where both parties were residents of the county and child's absence was temporary and for convenience of parties, the court had jurisdiction to award custody. Hughes v. Hughes, (1947) 180 Or 575, 178 P2d 170.

Custody award based partly on secret report of investigation pursuant to stipulation of parties necessitated reversal. Nelson v. Nelson, (1947) 180 Or 275, 176 P2d 648. **But see** Rea v. Rea, (1952) 195 Or 253, 245 P2d 884.

Evidence showed mother was entitled to absolute custody free from any visitation from father, and decrees of sister states as to custody were not entitled to full faith and credit where mother was a bona fide resident and there were changes in circumstances affecting the child's welfare. Crowell v. Crowell, (1948) 184 Or 467, 198 P2d 992.

Evidence showing plaintiff's profanity, total neglect of the home, neglect and cruelty to children, and attentions to other men justified the granting of custody of children to defendant. Goldson v. Goldson, (1949) 187 Or 206, 210 P2d 478.

An agreement between parents as to custody of children did not bind the court, as the court's sole concern was the welfare of the children. Shrader v. Shradar, (1950) 188 Or 199, 214 P2d 803.

The circuit court had power to permit a child to be taken to a foreign country by one of its parents when the court believed it would be conducive to the best interest of the child. Edwards v. Edwards, (1951) 191 Or 285, 229 P2d 652.

The consideration by the court of a report based upon independent investigation made by the court, a private conversation had with the infant whose custody was in issue, or an authorized investigation made by a member of the staff of the court, such action, being pursuant to stipulation of the parties or being acquiesced in by the parties would not constitute reversible error even though the report was not incorporated in the record. Rea v. Rea, (1952) 195 Or 253, 245 P2d 884.

The mother, even if she was the party at fault, was to be given custody of the child in the absence of clear proof that the mother was morally unfit or otherwise incompetent to rear the child. Wengert v. Wengert, (1956) 208 Or 290, 301 P2d 190.

Temporary order making placement of child under the supervision and control of juvenile court was temporary and not appealable. Watson v. Watson, (1958) 213 Or 182, 323 P2d 335.

Visitation rights could be terminated by the court when parent's harassment made the arrangement unworkable. Palmer v. Palmer, (1962) 230 Or 599, 371 P2d 567.

The natural right of the parent to the care and custody of minor children was not, except for most cogent reasons, to be denied in favor of third persons, including grandparents. Gheen v. Gheen, (1967) 247 Or 16, 426 P2d 876.

The preponderance of evidence tended to favor the father's home. Kightlinger v. Kightlinger, (1968) 249 Or 521, 439 P2d 614.

In determining custody, the court was required to consider the best interests of the children and the conduct and moral standards of the parties. Tingen v. Tingen, (1968) 251 Or 458, 446 P2d 185.

Award of custody to one parent solely because the other parent was likely to unreasonably interfere with visitation rights was error. Burzynski v. Burzynski, (1970) 2 Or App 459, 468 P2d 548.

In view of its obvious infringement upon the right of a prompt appeal, reservation of a decision on custody, ancil-

lary as it was to the divorce, was to be used only in exceptional cases where the best interest of the child clearly required it, and was to be limited to the shortest practicable period. Stonebrink v. Stonebrink, (1970) 2 Or App 328, 468 P2d 546.

In determining custody, the court was required to consider conduct establishing grounds for divorce only if such conduct was, or would be, directly detrimental to the child. Goode v. Goode, (1970) 4 Or App 34, 476 P2d 805.

Mental illness, moral misconduct or physical abuse, depending upon their manifestations or effect upon the children, could constitute such extraordinary circumstances as to justify complete denial of visitation. West v. West, (1971) 92 Or App Adv Sh 1806, 487 P2d 96.

Right of visitation could not be made dependent upon payment of support for children. Id.

3. Award for maintenance of minor children

(1) Under former similar statute. In determining allowances to divorced wife for care and education of children, the social standing, comforts and luxuries that would have been enjoyed except for the divorce were properly taken into consideration. Strickland v. Strickland, (1948) 183 Or 297, 192 P2d 986; Trombley v. Trombley, (1960) 225 Or 209, 357 P2d 283; Emery v. Emery, (1971) 5 Or App 133, 481 P2d 656.

A lien for the amount allowed for the care of minor children could be declared on realty of the spouse charged. Taylor v. Taylor, (1905) 47 Or 47, 81 P 367.

An amount in gross to the mother for the future care of the children, together with one-half of the furniture, etc., was justified, though the father was given the divorce. Id.

Evidence supported $20 monthly payments for child. Laycock v. Laycock, (1908) 52 Or 610, 98 P 487.

Provision according to the station in life of the children was required to be made for as long as they might need it. Mansfield v. Hill, (1910) 56 Or 400, 107 P 471, 108 P 1007.

Husband's liability for support of adopted child same as for child born of marriage. Wertz v. Wertz, (1928) 125 Or 53, 263 P 911.

When a child reached majority, authority of court to provide for his nurture and education ceased. Jackman v. Short, (1941) 165 Or 626, 109 P2d 860.

Court could not award allowance for support of child, born during marriage, shown clearly not to be the child of defendant. Burke v. Burke, (1959) 216 Or 691, 340 P2d 948.

The parent's fault did not ordinarily suspend his duty to support his child. Palmer v. Palmer, (1962) 230 Or 599, 371 P2d 567.

A support order under the section, until modified, fixed the upper and lower limits of liability for support. Coastal Adjustment Bureau, Inc. v. Wehner, (1967) 246 Or 115, 423 P2d 967.

A support order controlled over ORS 108.040 and 109.010. Id.

Court could require parent to maintain insurance for the benefit of the child. Cooley v. Cooley, (1969) 1 Or App 223, 461 P2d 65.

Support orders should not provide for future increases based upon contingencies that might or might not happen. Wells v. Wells, (1970) 2 Or App 221, 467 P2d 650.

Award of child support was in the sound discretion of the trial court and its judgment would not be disturbed on appeal except in cases of clear abuse. Id.

4. Award for maintenance of spouse

(1) Under former similar statute. The Supreme Court could grant alimony where it had jurisdiction of case for final disposition on merits. O'Brien v. O'Brien, (1889) 36 Or 92, 57 P 374, 58 P 892; Koufasimes v. Koufasimes, (1956) 206 Or 400, 293 P2d 200.

The allowance of alimony was within the discretion of the court and should not be disturbed on appeal unless abuse was apparent. Blake v. Blake, (1934) 147 Or 43, 31 P2d 768; Strickland v. Strickland, (1948) 183 Or 297, 192 P2d 986; Hofer v. Hofer, (1967) 247 Or 82, 427 P2d 411; Elliker v. Elliker, (1969) 1 Or App 18, 457 P2d 668.

Court award or alimony to party at fault, although husband consented to pay, was void since in excess of jurisdiction, and was subject to attack after time for appeal. Garner v. Garner, (1948) 182 Or 549, 189 P2d 397; Vosmek v. Vosmek, (1949) 186 Or 80, 204 P2d 1064. Garner v. Garner, supra, overruling Griffith v. Griffith, (1933) 143 Or 276, 22 P2d 323.

A separation agreement and settlement not made for the purpose of securing a separation, but in contemplation of a divorce without fault or inducement by the wife, was not void on grounds of public policy. Henderson v. Henderson, (1900) 37 Or 141, 60 P 597, 61 P 136, 82 Am St Rep 741, 48 LRA 766.

Award in gross of $2,500 for the maintenance of the wife was warranted by evidence. Laycock v. Laycock, (1908) 52 Or 610, 98 P 487.

A decree awarding to the prevailing husband a share in his wife's property, and to her a monthly sum, was upheld as presumably recognizing a lien in her favor. Miller v. Miller, (1913) 65 Or 551, 131 P 308, 133 P 86.

Where a settlement in trust for the wife failed, she was not barred by the agreement from claiming alimony. Sutton v. Sutton, (1915) 78 Or 9, 150 P 1025, 152 P 271.

Award of $15,000 in gross was proper where husband's property was valued at $50,000. McCallister v. McCallister, (1924) 113 Or 124, 229 P 687.

Evidence supported $1,000 maintenance award. Fowler v. Fowler, (1938) 158 Or 568, 76 P2d 1132.

Alimony could be awarded although there were no allegations in reference thereto. Cox v. Cox, (1938) 158 Or 74, 74 P2d 983.

Alimony was the allowance which the husband was compelled to pay for his wife's maintenance while she was living apart from him, or after she had been divorced. Warrington v. Warrington, (1939) 160 Or 77, 83 P2d 479.

The right to alimony was statutory, not contractual. Id.

Court could not grant to wife a sum greater than an amount representing the maintenance of herself and her children. Howard v. Howard, (1940) 164 Or 689, 103 P2d 756.

The section did not provide that the award had to be for a sum in gross, and not for a sum in annual payments. Id.

Discretion in choosing between an award in gross or in installments would not be interfered with unless abused. Id.

In fixing alimony, the court was required to take into account income taxes which the party at fault would be compelled to pay. Strickland v. Strickland, (1948) 183 Or 297, 192 P2d 986.

Court could consider relative blameworthiness of parties and award a lesser amount of alimony if prevailing party was partially at fault. Miles v. Miles, (1949) 185 Or 230, 202 P2d 485.

Court could not penalize party because of conduct towards prevailing spouse by award of unreasonable alimony. Id.

Before the 1953 amendment, the only exception to the rule that the prevailing party need not pay alimony was payment to an insane person, as such person could not be "at fault" within the meaning of the statute. Vosmek v. Vosmek, (1949) 186 Or 80, 204 P2d 1064.

The right to alimony was a personal right which was terminated by death. Shields v. Bosch, (1950) 190 Or 155, 224 P2d 560.

A property settlement which was entered into subsequent to divorce had to be approved by the court in order to be

binding on the parties or the court. Feves v. Feves, (1953) 198 Or 151, 254 P2d 694.

"Lump sum alimony" allowed in settlement of property rights rather than as an allowance for maintenance was properly awarded to party at fault. Bennett v. Bennett, (1956) 208 Or 524, 302 P2d 1019.

The mere possibility that the financial circumstances of the defendant might improve in the future through an inheritance, thus enabling him to contribute to the support of a former wife, was not sufficient grounds for an award of a token allowance of alimony. Johnson v. Johnson, (1966) 245 Or 10, 419 P2d 28.

Antenuptial agreements that prohibited alimony were contrary to public policy and void. Reiling v. Reiling, (1970) 256 Or 448, 474 P2d 327, rev'g 1 Or App 571, 463 P2d 591.

An award of permanent alimony was not warranted where the spouse was in good health and with a refresher course could again qualify for employment. Bohanan v. Bohanan, (1971) 92 Or App Adv Sh 1834, 487 P2d 113.

5. Award of personal property

(1) Under former similar statute. Personal property ownership of which was not pleaded or mentioned in evidence could not be awarded by court. Sutton v. Sutton, (1915) 78 Or 9, 150 P 1025, 152 P 271; Fuller v. Fuller, (1944) 175 Or 136, 151 P2d 979.

When plaintiff alleged that property belonged to defendant, court could not decree that plaintiff was owner. Weber v. Weber, (1888) 16 Or 163, 17 P 866.

6. Costs and attorney fees

(1) Under former similar statute. The court erred in allowing attorney fees in an amount in excess of that prayed for. McDonald v. McDonald, (1963) 234 Or 551, 383 P2d 96; Christy v. Christy, (1966) 244 Or 575, 419 P2d 425.

Allowance of attorney fees and costs were matters within the discretion of the trial court. Turner v. Turner, (1964) 237 Or 39, 390 P2d 360; Bohren v. Bohren, (1966) 243 Or 237, 412 P2d 524; Sandner v. Sandner, (1966) 243 Or 349, 413 P2d 424; Costanzo v Costanzo, (1970) 4 Or App 284, 478 P2d 440.

Additional attorney's fees were denied an appellant when the decision of the trial court was affirmed. Thompson v. Thompson, (1953) 199 Or 614, 263 P2d 616.

Contingent fee contracts in divorce proceedings were invalid. Hay v. Erwin, (1966) 244 Or 488, 419 P2d 32.

7. Judgments; contempt and appeal

(1) Under former similar statute. Decree for monthly alimony payments under further order of court was not a definite liability or judgment which may become a lien. Mansfield v. Hill, (1910) 56 Or 404, 107 P 471, 108 P 1007.

Court could punish by contempt for failure to pay support and maintenance money for children, as well as for wife. State v. Casey, (1944) 175 Or 328, 153 P2d 700.

Inability to make alimony payments unless due to contumacious conduct was defense in contempt proceeding for failure to pay. State v. Blackwell, (1947) 181 Or 157, 179 P2d 278, 179 P2d 1023.

A prima facie case of wilful failure to make alimony and child support payments established by affidavit was overcome by a counter affidavit asserting inability, not refuted by a further affidavit or other evidence. Id.

The factual inaccuracy of a decree did not impair its status as a final decree, though it could be set aside or modified. Cutts v. Cutts, (1961) 229 Or 33, 366 P2d 179.

Bankruptcy referee erred in treating unpaid installments as divorced wife's property. In re Gardner, (1965) 243 F Supp 258.

Acceptance of the benefits of a judgment did not constitute waiver of the right of appeal if there was an irrevocable admission of an amount due the appellant or if the court was without power to render a decision less favorable to the appellant. Hofer v. Hofer, (1966) 244 Or 88, 415 P2d 753.

8. Foreign decrees

(1) Under former similar statute. A decree of foreign state for maintenance of child which was subject to modification at any time was not a final decree on which suit could be brought in this state. Rowe v. Rowe, (1915) 76 Or 491, 149 P 533; Picker v. Vollenhover, (1955) 206 Or 45, 290 P2d 789.

In a decree of a foreign state where it was stated as a conclusion that spouse was "entitled" to alimony rather than made a decree, there was no decree upon which execution could be based. Rowe v. Rowe, (1915) 76 Or 491, 149 P 533.

A judgment of another state for arrears of alimony under its decree may be enforced, though based on a decree that was subject by its laws to modification. De Vall v. De Vall, (1910) 57 Or 128, 109 P 755, 110 P 705.

The enforcement in Oregon of future payments under a decree of a foreign state depended on comity. Picker v. Vollenhover, (1955) 206 Or 45, 290 P2d 789.

9. Liability of estate for maintenance payments.

(1) Under former similar statute. An agreement for monthly payments to wife embodied in decree, where in nature of alimony rather than property settlement, was not binding on estate after husband's death. Prime v. Prime, (1943) 172 Or 34, 139 P2d 550. Overruling Mansfield v. Hill, (1910) 56 Or 400, 107 P2d 471, 108 P2d 1007.

On the death of a parent who had been ordered to make payments for support of a child, such order terminated automatically with respect to payments accruing after such death. Streight v. Streight, (1961) 226 Or 386, 360 P2d 304.

10. Disposition of property

(1) Under former similar statute

(a) In general. Equity would not enforce or reform contracts for property settlements made in pursuance of a void agreement between parties to obtain a divorce or facilitate it by making no defense. Phillips v. Thorp, (1883) 10 Or 494; Hodler v. Hodler, (1920) 95 Or 180, 185 P 141, 187 P 604.

The statute applied only to divorces granted in Oregon. Barrett v. Failing, (1884) 111 US 523, 4 S Ct 598, 28 L Ed 505, affirming 3 Fed 571, 6 Sawy 473; Robinson v. Scott, (1916) 81 Or 20, 158 P 268.

Title came to plaintiff by force of decree in virtue of the statute and only as an incident of divorce. Houston v. Timmerman, (1889) 17 Or 499, 21 P 1037, 11 Am St Rep 848, 4 LRA 716; Schoren v. Schoren, (1924) 110 Or 272, 214 P 885, 222 P 1096.

Since 1947 amendment the court need not award the party not at fault any interest in the property owned by the other party, but was required to award to one granted the decree such interest as was proper under the circumstances. Siebert v. Siebert, (1948) 184 Or 496, 191 P2d 659; Flanagan v. Flanagan, (1950) 188 Or 126, 213 P2d 801.

The preferential status originally accorded to the prevailing party in making an award of real property ceased to exist upon adoption of 1953 amendment to the section. Chatterton v. Chatterton, (1956) 208 Or 434, 301 P2d 1034; Rivier v. Rivier, (1956) 209 Or 342, 306 P2d 423.

Disposition of property was just and proper. Parker v. Parker, (1971) 4 Or App 365, 479 P2d 528; Hug v. Hug, (1971) 5 Or App 436, 485 P2d 428.

The decree should be in the same suit, but could be deferred until the right to divorce was determined. Bamford v. Bamford, (1870) 4 Or 30.

A divorce decree by a court in another state was void so far as it attempted to convey the title to lands within state. Williams v. Williams, (1917) 83 Or 59, 162 P 834.

A trial court denying a divorce was without authority

to order one of the parties to convey real property to the other party. Gooden v. Gooden, (1947) 180 Or 309, 176 P2d 634.

The statute had no application to a determination of whether an allowance of alimony in gross was proper. Miles v. Miles, (1949) 185 Or 230, 202 P2d 485.

Under 1947 amendment, evidence warranted a modification of property settlement so as to give party obtaining decree a third of other party's undivided half interest in realty, plus a half interest in all personal property. Morrow v. Morrow, (1949) 187 Or 161, 210 P2d 101.

Considerations similar to those pertaining to the award of permanent alimony, including financial conditions, nature and value of property, contributions to tenancy by the entireties, duration of marriage, income and earning capacity of husband, age, health and ability to labor of parties, determined award to party not at fault. Flanagan v. Flanagan, (1950) 188 Or 126, 213 P2d 801.

The distribution of property upon dissolution of a marriage was a matter of discretion, and a decree ordering distribution would not be set aside on appeal unless an abuse of discretion is shown. Shields v. Bosch, (1950) 190 Or 155, 224 P2d 560.

A decree awarding property to plaintiff subject to condition that she convey certain interests to defendant would be affirmed if she voluntarily complied with condition, otherwise the cause would be remanded for the making of a new award. Polanski v. Polanski, (1951) 193 Or 429, 238 P2d 739.

The Supreme Court did not have authority to adjust property rights when the trial court refused to grant a divorce. Bauman v. Clark, (1954) 203 Or 193, 272 P2d 214, 279 P2d 478.

The respective contributions of the parties was only one of the factors to be considered in making a disposition of property. Prince v. Prince, (1960) 225 Or 331, 358 P2d 506.

(b) Property subject to statute. Court could not transfer real property unless it was brought before court by proper pleading. Bamford v. Bamford, (1870) 4 Or 30; Northcut v. Lemery, (1880) 8 Or 316; Hall v. Hall, (1881) 9 Or 452; Perkins v. Perkins, (1914) 72 Or 302, 143 P 995; Schoren v. Schoren, (1924) 110 Or 272, 214 P 885, 222 P 1096; Jenkins v. Jenkins, (1926) 119 Or 292, 247 P 145, 248 P 1095. **Contra,** Houston v. Timmerman, (1889) 17 Or 499, 21 P 1037, 11 Am St Rep 848, 4 LRA 716.

The statute applied only to land located in Oregon. Baird v. Baird, (1920) 98 Or 169, 188 P 699; Barrett v. Failing, 111 US 523, 4 S Ct 598, 28 L Ed 505, affirming 3 Fed 571, 6 Sawy 473.

Court was authorized to make such disposition of property as was just and proper without regard to the question of which party is at fault. Bennett v. Bennett, (1956) 208 Or 524, 302 P2d 1019; Beroud v. Beroud, (1970) 4 Or App 469, 478 P2d 652.

Division of property was largely in the discretion of the trial court. Sandner v. Sandner, (1966) 243 Or 349, 413 P2d 424; Johnson v. Johnson, (1966) 245 Or 10, 419 P2d 28; Stettler v. Stettler, (1970) 2 Or App 119, 467 P2d 130; Costanzo v. Costanzo, (1970) 4 Or App 284, 478 P2d 440.

The pleadings and decree had to identify the land with the certainty of ordinary conveyances. Senkler v. Berry, (1908) 52 Or 212, 96 P 1070. **Contra,** Houston v. Timmerman, (1889) 17 Or 499, 21 P 1037, 11 Am St Rep 848, 4 LRA 716.

Where defendant was alleged to have land described as "unknown" and by lot numbers without country or state name, no interest therein could be decreed to spouse. Gustin v. Gustin, (1916) 79 Or 387, 155 P 370.

A homestead entry completed except for patent was land "owned" by husband. Thompson v. Thompson, (1916) 79 Or 513, 155 P 1190. **But see** Huffman v. Huffman, (1906) 47 Or 610, 86 P 593, 114 Am St Rep 943.

The interest of a beneficiary under a will devising property to "heirs" of life tenant still living, was land "owned" under the section. Jerman v. Jerman, (1929) 129 Or 402, 275 P 915.

Realty devised to the defendant and attempted to be transferred to another by an ineffective waiver and renunciation of the devise after its acceptance, was subject to the subsection. Blake v. Blake, (1934) 147 Or 43, 31 P2d 768.

Court could consider amount of property out of state owned by defendant. Fuller v. Fuller, (1944) 175 Or 136, 151 P2d 979.

Since the 1947 amendment, if husband and wife held property as tenants by the entirety, the party obtaining the decree became owner of an undivided one-half. The court could then award an interest in the other half to the party not at fault, if just and proper, and the unaffected portion remained the property of the party against whom the decree was granted. Siebert v. Siebert, (1948) 184 Or 496, 199 P2d 659.

Under 1953 amendment, only limitation on court's power to make a division or other disposition of property when a marriage was dissolved or annulled was that it must be "just and proper in all the circumstances." Barone v. Barone, (1956) 207 Or 26, 294 P2d 609.

"Lump sum alimony" allowed in settlement of property rights rather than as an allowance for maintenance was properly awarded to party at fault. Bennett v. Bennett, (1956) 208 Or 524, 302 P2d 1019.

Court was authorized to make such disposition of property as was just and proper without regard to the question of which party is at fault. Id.

Court would consider financial condition of parties. Wengert v. Wengert, (1956) 208 Or 290, 301 P2d 190.

Lien arising from docketing of judgment against husband's interest in tenancy by entireties prior to divorce continued in force as against the wife's interest upon award of the entire estate to her by divorce decree. Brownley v. Lincoln County, (1959) 218 Or 7, 343 P2d 529.

The property settlement agreement, incorporated into the decree, was thereafter beyond the power of the court to modify. Kuckenberg v. Kuckenberg, (1969) 252 Or 647, 452 P2d 305.

Requiring husband to pay debts of parties acquired during marriage was appropriate as a division of their property. Cooley v. Cooley, (1969) 1 Or App 223, 461 P2d 65.

FURTHER CITATIONS: Fitch v. Cornell, (1870) 1 Sawy 156, 9 Fed Cas 176; Groslouis v. Northcut, (1872) 3 Or 394; Doscher v. Blackiston, (1879) 7 Or 403; Brooks v. Ankeny, (1879) 7 Or 461; Weiss v. Bethel, (1880) 8 Or 522; Barrett v. Failing, (1884) 111 US 523, 4 S Ct 598, 28 L Ed 505, aff'g 3 Fed 571, 6 Sawy 473; O'Brien v. O'Brien, (1889) 36 Or 92, 57 P 374, 58 P 892; Nickerson v. Nickerson, (1898) 34 Or 1, 48 P 423, 54 P 277; Macdonald v. O'Reilly, (1904) 45 Or 589, 78 P 753; Hayes v. Horton, (1905) 46 Or 597, 81 P 386; Huffman v. Huffman, (1906) 47 Or 610, 86 P 593, 114 Am St Rep 943; Taylor v. Taylor, (1909) 54 Or 560, 103 P 524; Calavan v. Bower, (1912) 61 Or 298, 122 P 300; Short v. Short, (1912) 62 Or 118, 123 P 388; Miller v. Miller, (1913) 65 Or 551, 131 P 308, 133 P 86; Taylor v. Taylor, (1914) 70 Or 510, 134 P 1183, 140 P 999; Chase v. McKenzie, (1916) 81 Or 429, 159 P 1025; Somo v. Independent Order of Foresters, (1917) 83 Or 654, 164 P 187; Hengen v. Hengen, (1917) 85 Or 155, 166 P 525; Sherman v. Sherman, (1918) 89 Or 130, 173 P 572; Crumbley v. Crumbley, (1920) 94 Or 617, 186 P 423; Hodler v. Hodler, (1920) 95 Or 180, 185 P 241, 187 P 604; White v. White, (1920) 100 Or 387, 190 P 969, 197 P 1080; Claggett v. Claggett, (1925) 115 Or 520, 236 P 482, 238 P 1119; Schafer v. Schafer, (1927) 122 Or 620, 260 P 206, 59 ALR 707; Wilhelm v. Wilhelm, (1928) 126 Or 388, 270 P 516; LaFollett v. LaFollett, (1932) 138 Or 411, 2 P2d 1109, 6 P2d 1085; In re Mayfield, (1938) 158 Or 409, 76 P2d 984; Commr. of Int. Rev. v. Nicolai, (1942) 126 F2d 927;

Garner v. Garner, (1948) 182 Or 549, 189 P2d 397; Morrow v. Morrow, (1949) 187 Or 161, 210 P2d 101; Marston v. Marston, (1949) 187 Or 243, 210 P2d 832; Claude v. Claude, (1951) 191 Or 308, 228 P2d 776, 230 P2d 211; Gibson v. Gibson, (1951) 193 Or 139, 237 P2d 498; Shannon v. Shannon, (1951) 193 Or 575, 238 P2d 744, 239 P2d 933; Dibble v. Meyer, (1955) 203 Or 541, 278 P2d 901, 280 P2d 765; Esselstyn v. Casteel, (1955) 205 Or 344, 286 P2d 665, 288 P2d 214, 215; Wagner v. Wagner, (1956) 206 Or 340, 293 P2d 224; Hall v. Hall, (1956) 208 Or 437, 302 P2d 724; Brandt v. Brandt, (1958) 215 Or 423, 333 P2d 887; Holverson v. Holverson, (1960) 222 Or 554, 353 P2d 618; Schuyler v. Haggart, (1960) 224 Or 530, 356 P2d 955; Landers v. Landers, (1961) 226 Or 380, 360 P2d 552; Hemstreet v. Hemstreet, (1961) 228 Or 88, 363 P2d 731; Usery v. Usery, (1961) 229 Or 196, 367 P2d 449; Zavin v. Zavin, (1961) 229 Or 289, 366 P2d 733; Frische v. Frische, (1961) 229 Or 503, 366 P2d 906; McCraw v. McCraw, (1962) 231 Or 638, 373 P2d 667; Rothwell v. Rothwell, (1959) 219 Or 221, 347 P2d 63; Moreland v. Moreland, (1962) 232 Or 309, 374 P2d 741, 375 P2d 242; Anderson v. Anderson, (1962) 232 Or 160, 374 P2d 479; Beard v. Beard, (1962) 232 Or 552, 376 P2d 404; Cathcart v. Cathcart, (1962) 232 Or 624, 376 P2d 665; Ballard v. Ballard, (1962) 233 Or 74, 377 P2d 24; Standley v. Standley, (1963) 234 Or 58, 379 P2d 868; Miller v. Miller, (1963) 234 Or 203, 380 P2d 980; In re Estate of Pfifer, (1963) 235 Or 561, 385 P2d 1007; Coleman v. Coleman, (1963) 236 Or 73, 386 P2d 811; Wells v. Wells, (1964) 237 Or 477, 392 P2d 246; Montgomery v. Montgomery, (1964) 237 Or 544, 392 P2d 324; Fulgham v. Fulgham, (1964) 238 Or 6, 392 P2d 777; Swint v. Swint, (1964) 238 Or 367, 395 P2d 114; Koennecke v. Koennecke, (1964) 239 Or 274, 397 P2d 203; Wald v. Wald, (1964) 239 Or 351, 397 P2d 541; Peake v. Peake, (1965) 242 Or 386, 408 P2d 206; Wilson v. Wilson, (1965) 242 Or 201, 407 P2d 898, 408 P2d 940; Malcow v. Malcow, (1966) 243 Or 552, 414 P2d 813; Protrka v. Palmer, (1967) 246 Or 467, 423 P2d 514; Morriss v. Morriss, (1967) 247 Or 432, 430 P2d 995; Jensen v. Jensen, (1968) 249 Or 423, 438 P2d 1013; Killam v. Killam, (1968) 251 Or 59, 444 P2d 479; Brown v. Brown, (1970) 2 Or App 123, 467 P2d 119.

ATTY. GEN. OPINIONS: Effect of divorce on obligation to support insane wife, 1942-44, p 232; custody of incompetent who attains majority, 1944-46, p 445; enforcement of payments of alimony to a divorced wife under the Uniform Reciprocal Enforcement of Support Act, 1952-54, p 16.

LAW REVIEW CITATIONS: 7 OLR 253; 16 OLR 288; 19 OLR 196; 20 OLR 377; 25 OLR 63; 34 OLR 67; 43 OLR 108-119; 2 WLJ 129-133, 166-170, 207-234; 5 WLJ 82-92, 171-176.

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CASE CITATIONS: McLennan v. McLennan, (1897) 31 Or 480, 50 P 802, 65 Am St Rep 835, 38 LRA 863; State v. Leasia, (1904) 45 Or 410, 78 P 328; Wallace v. McDaniel, (1911) 59 Or 378, 117 P 314, LRA 1916C, 744; Hooper v. Hooper, (1913) 67 Or 187, 135 P 205, 525; State v. Langford, (1918) 90 Or 251, 176 P 197; Vnuk v. Patterson, (1926) 118 Or 602, 247 P 766, 47 ALR 394; Fisher v. Fisher, (1930) 133 Or 318, 289 P 1062; Marcus v. Marcus, (1944) 173 Or 693, 147 P2d 191; Nelson v. Nelson, (1947) 181 Or 494, 182 P2d 416; Ott v. Chrisman, (1951) 193 Or 263, 238 P2d 269; Wright v. Kroeger, (1959) 219 Or 102, 345 P2d 809; Miller v. Miller, (1961) 228 Or 301, 365 P2d 86; Albina Eng. & Mach. Works v. O'Leary, (1964) 328 F2d 877; Lilienthal v. Kaufman, (1964) 239 Or 1, 395 P2d 543.

ATTY. GEN. OPINIONS: Extraterritorial effect of prohibition against remarriage, 1944-46, p 190; validity of out-of-state marriage celebrated less than six months after one of the parties received a divorce in this state, 1950-52, p 177; right to remarry after a divorce decree entered prior to effective date of 1965 amendment, 1964-66, p 244.

LAW REVIEW CITATIONS: 37 OLR 82; 2 WLJ 91.

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NOTES OF DECISIONS

Former similar statute related to domestic divorce decrees and not to suits pursuant to OCLA (s) 9-914(a) [ORS 43.180]. Shannon v. Shannon, (1952) 193 Or 575, 238 P2d 744, 239 P2d 993.

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NOTES OF DECISIONS

1. Constitutionality
2. In general
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3. Custody awards
   (1) Under former similar statute
4. Maintenance of children
5. Maintenance of spouse; stipulated settlement and remarriage
   (1) Under former similar statute
6. Finality of decrees and liens
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7. Vacation of decrees

1. Constitutionality

A former similar statute was not unconstitutional on the grounds that it was a legislative amendment of territorial laws which, because preserved by Ore. Const. Art. XVIII, §7, had to be amended in the same manner as a constitution. Andrews v. Andrews, (1933) 144 Or 200, 24 P2d 332.

2. In general

(1) Under former similar statute. Except under powers granted by the former statute, a court had no power after the term to make any substantial change in the decree except to correct clerical errors or to make the judgment conform to the actual decision. Silliman v. Silliman, (1913) 66 Or 402, 133 P 769; Bogh v. Bogh, (1949) 185 Or 93, 202 P2d 503. **But see** State v. Hall, (1936) 153 Or 127, 55 P2d 1102.

In an independent suit brought by the husband to modify a decree fixing permanent alimony the court had no power to direct the husband to pay the wife's counsel fees. Corder v. Speake, (1900) 37 Or 105, 51 P 647.

A decree rendered by the Supreme Court on appeal was subject to modification in the circuit court as to maintenance to the same extent as if originally entered there. Gadsby v. Gadsby, (1913) 65 Or 309, 131 P 1022.

On motion to modify alimony decree the court had no power to make a declaratory judgment of the parties' rights. Andrews v. Andrews, (1933) 144 Or 200, 205, 24 P2d 332.

Relief from a voluntary conveyance of real property made pursuant to a void order could not be given on a motion to modify alimony decree. Id.

Rights in personal property not the subject of the decree could not be settled on motion to modify an alimony decree. Id.

A modification could be ordered with leave to move for further modification, if conditions changed. Andrews v. Andrews, (1933) 144 Or 200, 24 P2d 332.

The power to modify existed by virtue of statute whether reserved in the decree or not. Mason v. Mason, (1934) 148 Or 34, 34 P2d 328.

One who was not a party to a divorce suit had no standing in court to request the modification of a divorce decree. Zachary v. Zachary, (1937) 155 Or 346, 63 P2d 1080.

Mother of spouse was not a party to divorce suit and had no standing to seek modification of decree. Id.

An attorney for plaintiff in divorce action was not a party and had no standing to seek modification of decree. Carlton v. Carlton, (1937) 156 Or 33, 65 P2d 1417.

Attorney fees could be awarded by the court against a moving party who was partly successful. Scott v. Scott, (1955) 204 Or 291, 282 P2d 658.

At the time of divorce, the court was not permitted to lay down rules for future whose propriety would depend on circumstances materially different from those shown by evidence and which could not reasonably be predicted from evidence. Picker v. Vollenhover, (1955) 206 Or 45, 290 P2d 789.

Original decree should not provide for future changes in amount of support based on single criterion of change in amount of earnings of defendant. Id.

Service on defendant's attorney of record (who still represented defendant) of a motion to modify divorce decree provision for child support constituted sufficient notice to confer jurisdiction. Scarth v. Scarth, (1957) 211 Or 121, 315 P2d 141.

The court's jurisdiction continued after a divorce decree not only to modify the decree so as to require the payment of support money for an omitted child but also to determine the question of paternity. Moore v. Moore, (1962) 231 Or 302, 372 P2d 981.

Where the decree became final without an award of maintenance for the spouse the court could not afterwards modify the decree as to maintenance. Peake v. Peake, (1965) 242 Or 386, 408 P2d 206.

By filing a motion in the trial court under the statute, appellant waived her right of appeal. Wilson v. Wilson, (1965) 243 Or 498, 408 P2d 940.

A divorce court had only such power to grant attorney fees as was expressly conferred upon it by statute. Fox v. Fox, (1969) 254 Or 444, 460 P2d 1013.

3. Custody awards

(1) Under former similar statute. Custody awards were subject to modification. Matthews v. Matthews, (1912) 60 Or 451, 119 P 766; McKay v. McKay, (1915) 77 Or 14, 149 P 1032; Neil v. Neil, (1924) 112 Or 63, 228 P 687; Mason v. Mason, (1934) 148 Or 34, 34 P2d 328.

An application for modification of decree relating to the custody of a minor child was required to be made to the court in which the decree was rendered. Hertzen v. Hertzen, (1922) 104 Or 423, 208 P 580.

Custody award would not be modified unless changed conditions indicated that modification was for best interest of child. Wells v. Wells-Crawford, (1927) 120 Or 557, 251 P 263, 251 P 907; Leverich v. Leverich, (1944) 175 Or 174, 152 P2d 303; Henrickson v. Henrickson, (1960) 225 Or 398, 358 P2d 507; Gonyea v. Gonyea, (1962) 232 Or 367, 375 P2d 808; Hogan v. Hogan, (1971) 92 Or App Adv Sh 1800, 486 P2d 1309; Gonyea v. Gonyea and Henrickson v. Henrickson, supra, **distinguished in** Cooley v. Cooley, (1969) 1 Or App 223, 461 P2d 65.

Mere showing that parent now was better able to care for child than when custody was granted to other parent was insufficient to warrant modification. Wells v. Wells-Crawford, (1927) 120 Or 557, 251 P 263, 907; Henrickson v. Henrickson, (1960) 225 Or 398, 358 P2d 507.

Wife failed to establish by preponderance of evidence any material change in conditions relative to children's welfare to warrant removing custody from husband, but visition rights were allowable. Jenkins v. Jenkins, (1948) 184 Or 525, 198 P2d 985; Kellogg v. Kellogg, (1949) 187 Or 617, 213 P2d 172; Lingel v. Maudlin, (1949) 188 Or 147, 212 P2d 751; Gallagher v. Gallagher, (1949) 187 Or 625, 212 P2d 746.

Evidence did not warrant modification of custody decree. Weitzel v. Weitzel, (1948) 185 Or 20, 200 P2d 604, cert. denied, 337 US 946, 69 S Ct 1504, 93 L Ed 1470; Shradar v. Shradar, (1950) 188 Or 199, 214 P2d 803; Henrickson v. Henrickson, (1960) 225 Or 398, 358 P2d 507; James v. James, (1966) 245 Or 144, 420 P2d 635.

Evidence warranted modification of custody decree. Gallagher v. Gallagher, (1944) 174 Or 22, 146 P2d 768; Layton v. Layton, (1944) 174 Or 463, 149 P2d 574; Snider v. Snider, (1969) 251 Or 300, 445 P2d 134; Dougherty v. Dougherty, (1971) 5 Or App 100, 482 P2d 762; Hogan v. Hogan, (1971) 92 Or App Adv Sh 1800, 486 P2d 1309.

Once having acquired jurisdiction the court possessed the power to make or modify an award of custody though the children were physically without the state. Hughes v. Hughes, (1947) 180 Or 575, 178 P2d 170; Godfrey v. Godfrey, (1961) 228 Or 228, 364 P2d 620.

An order giving wife custody of a young daughter except limited periods with husband was modified to exclusive custody until the child reached 10, when she should choose, both parents having remarried. Bedingfield v. Bedingfield, (1918) 88 Or 711, 173 P 255.

The right to visit child could be modified. Hertzen v. Hertzen, (1922) 104 Or 423, 208 P 580.

Remarriage of the father does not warrant change from custody of mother also remarried. Wells v. Wells-Crawford, (1927) 120 Or 557, 251 P 263.

The wish of a parent was no ground for modifying custody of a child. Id.

Evidence supported modification of decree awarding custody to mother who had subsequently left child with sister; custody should go to father in preference to aunt, mother having moved to distant town. Fisher v. Fisher, (1930) 133 Or 318, 289 P 1062.

Parental feelings ought not to be controlling if the best interests of the children would be subserved by disregarding them. Saltzman v. Saltzman, (1936) 154 Or 178, 58 P2d 617.

Best interests of very young child were served by eliminating decree provision giving father, the party at fault, custody for two months each year. Van Doozer v. Van Doozer, (1947) 181 Or 274, 181 P2d 126.

Where both husband and wife were acceptable for award of custody, modification of decree was proper to allow husband the custody for a summer period in view of changed condition of parties having moved over 1000 miles apart. Hughes v. Hughes, (1947) 180 Or 575, 178 P2d 170.

Father's duty of support might be terminated if children's welfare did not require continued contributions, where mother refused father his right of visitation under decree. Levell v. Levell, (1948) 183 Or 39, 190 P2d 527. **But see** Beelman v. Beelman, (1961) 227 Or 556, 361 P2d 663, 363 P2d 561.

Fact that subsequent husband of wife had served sentence for a misdemeanor did not indicate that his presence and influence would not be for best interests and welfare of the children awarded the wife. Cripe v. Cripe, (1949) 186 Or 502, 207 P2d 1049.

Father was entitled to visitation of child at his home one summer month each year in view of violent antagonism of spouse of mother's subsequent remarriage. Williamson v. Williamson, (1949) 186 Or 279, 206 P2d 605.

The former statute did not give a divorce court the power to modify its decree to give custody of a child to the maternal grandparents after the death of his mother. Volz v. Abelsen, (1950) 190 Or 319, 224 P2d 213, 225 P2d 768.

Where a mother had corrected her previous faults which affected her fitness to have the custody of her children, the childrens' best interests demanded that they be awarded to her if she was a fit and proper person to have their custody. Goldson v. Goldson, (1951) 192 Or 611, 236 P2d 314.

Consent of parties to child custody proceeding to independent investigation by trial court regarding custody of children constituted a waiver of objections to such investi-

gation. Schuyler v. Haggart, (1960) 224 Or 530, 356 P2d 955.

Children not under 10 years of age of the parties to proceeding for modification of a custody award in a divorce decree were competent witnesses. Kreutzer v. Kreutzer, (1961) 226 Or 158, 359 P2d 536.

The mother's refusal to cooperate with the father in his visits with their children, augmented by the attitude of the mother's new spouse constituted a change in circumstances justifying a change in custody. Beelman v. Beelman, (1961) 227 Or 556, 361 P2d 663, 363 P2d 561.

The right to relief from support payments to enforce visitation rights was subordinate to the welfare of the children and in the discretion of the court. Id.

The statute did not curtail the courts' power to act for the welfare of the children until one of the parties made an appropriate motion. Id.

Any moral transgressions of the mother had to be considered, together with other relevant factors, in determining what was best for the child. Read v. Read, (1961) 229 Or 113, 366 P2d 164.

Modification of custody award would not be disturbed on appeal unless it was made clear that the result reached by the trial court was wrong. Read v. Read, (1961) 229 Or 113, 366 P2d 164; Hawke v. Hawke, (1970) 3 Or App 514, 475 P2d 591.

Modification of a custody award was warranted if there had been a change of circumstances such as to injuriously affect the child or there existed some material fact unknown at the time of the decree. Gonyea v. Gonyea, (1962) 232 Or 367, 375 P2d 808.

The mere putting into operation of a decree might in some cases qualify as a change of circumstances. Id.

Change of conditions resulted only from efforts to cope with problems centering in the child and there was not sufficient change to warrant change of custody. Campagna-Jones v. Jones, (1963) 234 Or 378, 381 P2d 63.

Jurisdiction of the Juvenile Court could only be invoked if the children were of a class defined in ORS 419.476 (1). Medina v. Medina, (1966) 243 Or 629, 415 P2d 169.

The Oregon Court did not have jurisdiction to entertain a petition for change of custody of children domiciled in another state. Bacon v. Bacon, (1970) 3 Or App 85, 472 P2d 283.

The change of circumstances which would justify a change in custody had to be quite real if the benefits from a change were to overcome the damage done to a child who was exposed to shifting parental figures. McCutchan v. McCutchan, (1971) 5 Or App 96, 483 P2d 93.

Marital misconduct by a party to a divorce did not permanently disqualify the party from being awarded custody. Hogan v. Hogan, (1971) 92 Or App Adv Sh 1800, 486 P2d 1309.

4. Maintenance of children

Awards for support of children were subject to modification. Matthews v. Matthews, (1912) 60 Or 451, 119 P 766; McKay v. McKay, (1915) 77 Or 14, 149 P 1032; Neil v. Neil, (1924) 112 Or 63, 228 P 687; Mason v. Mason, (1934) 148 Or 34, 34 P2d 328; Kiessenbeck v. Kiessenbeck, (1941) 167 Or 25, 114 P2d 147.

Minor children were not parties to divorce decrees and were not bound by decrees for their maintenance. McFarlane v. McFarlane, (1903) 43 Or 477, 73 P 203, 75 P 139; Gibbons v. Gibbons, (1915) 75 Or 500, 147 P 530; Kiessenbeck v. Kiessenbeck, (1941) 167 Or 25, 114 P2d 147.

On modification of decree, court could allow for maintenance of child, although no allowance was made in original decree. McFarlane v. McFarlane, (1903) 43 Or 477, 73 P 203, 75 P 139; Hess v. Hess, (1925) 115 Or 595, 239 P 124; Jackman v. Short, (1941) 165 Or 626, 109 P2d 860.

Courts could subsequently, on proper notice, require parties in fault to contribute to the future support of their minor children. McFarlane v. McFarlane, (1903) 43 Or 477, 73 P 203, 75 P 139; Mack v. Mack, (1919) 91 Or 514, 179 P 557.

Courts could subsequently, on proper notice, require party in fault to pay a reasonable sum for past support of minor children. McFarlane v. McFarlane, (1903) 43 Or 477, 73 P 203, 75 P 139.

Evidence did not warrant modification charging husband for past support of minor children since wife had ample means and was under obligation to support children. Gibbons v. Gibbons, (1915) 75 Or 500, 147 P 530.

The education and support of children was borne equally by parents if they were able, if not, by either who was financially responsible. Gibbons v. Gibbons, (1915) 75 Or 500, 147 P 530.

When a child reaches the age of majority, authority to make provision for his nurture and education ceased. Jackman v. Short, (1941) 165 Or 626, 109 P2d 860.

Where the age of majority was changed from 18 to 21 years, a decree annulling a marriage and providing support for a child during minority was to be construed in the light of the former statute; defendant was properly required to provide support until the child attained 21 years. Kiessenbeck v. Kiessenbeck, (1941) 167 Or 25, 114 P2d 147.

The statute changing the age of majority from 18 to 21 years, when the child was under 18, was not given retroactive effect by requiring the father to continue payments until the child reached 21. Id.

Husband failing to make sufficient showing of change of conditions other than his remarriage was not entitled to reduction of amount for support and maintenance of his children. Norris v. Norris, (1947) 182 Or 101, 186 P2d 67; Rowley v. Rowley, (1962) 232 Or 285, 375 P2d 84; Brown v. Brown, (1970) 1 Or App 543, 464 P2d 706.

Minor children were wards of the divorce court in divorce proceedings and the court had continuing jurisdiction over the custody and maintenance of the children so long as both parents remained alive. Quinn v. Hanks, (1951) 192 Or 254, 233 P2d 767.

A provision in a decree for the support of minor children could be modified only on a showing of a change in circumstances at the time the modification was made. Picker v. Vollenhover, (1955) 206 Or 45, 290 P2d 789.

Service on defendant's attorney of record (who still represented defendant) of a motion to modify divorce decree provision for child support constituted sufficient notice to confer jurisdiction. Scarth v. Scarth, (1957) 211 Or 121, 315 P2d 141.

A child support decree was subject to modification to alleviate the parent's financial hardship brought about by his change of employment if the change was made in good faith. Nelson v. Nelson, (1960) 225 Or 257, 357 P2d 536, 89 ALR2d 1.

The amount of support money was a matter of judicial discretion resting upon the physical and social requirements of the children and the ability of the party charged to pay. Hemstreet v. Hemstreet, (1961) 228 Or 88, 363 P2d 731.

The amount of support money was not to be used to enforce a parent's right of visitation. Id.

A motion to modify a support order if not prosecuted with reasonable diligence could be dismissed. Pemberton v. Pemberton, (1962) 230 Or 190, 369 P2d 276.

Reduction of payments for support of children should have been allowed. Bisbee v. Bisbee, (1968) 250 Or 234, 441 P2d 615; Roberts v. Roberts, (1969) 1 Or App 106, 459 P2d 562.

5. Maintenance of spouse; stipulated settlement and remarriage

(1) Under former similar statute. The remarriage of a divorced wife did not by itself cancel the obligation to pay alimony instalments awarded by decree, but was reason for

modifying the decree. Brandt v. Brandt, (1902) 40 Or 477, 67 P 508; Nelson v. Nelson, (1947) 181 Or 494, 182 P2d 416.

Where no alimony was awarded in original decree, court could not award alimony on modification. McFarlane v. McFarlane, (1903) 43 Or 477, 73 P 203, 75 P 139; Saurman v. Saurman, (1929) 131 Or 117, 282 P 111; Commr. of Int. Rev. v. Nicolai, (1942) 126 F2d 927.

It was within power of court to modify a decree providing maintenance for either party to suit. Andrews v. Andrews, (1933) 144 Or 200, 24 P2d 332; Mason v. Mason, (1934) 148 Or 34, 34 P2d 328.

A stipulated settlement embodied in decree could be modified by court where circumstances were changed and the alimony was not in lieu of claim to property. Warner v. Warner, (1934) 145 Or 541, 28 P2d 625; Commr. of Int. Rev. v. Nicolai, (1942) 126 F2d 927; Prime v. Prime, (1943) 172 Or 34, 139 P2d 550; Briggs v. Briggs, (1946) 178 Or 193, 165 P2d 772, 166 ALR 666; Hurner v. Hurner, (1946) 179 Or 349, 170 P2d 720.

A property settlement approved by the court was not subject to modification. Jensen v. Jensen, (1968) 249 Or 423, 438 P2d 1013; Hayter v. Hayter, (1969) 1 Or App 199, 460 P2d 366; Brown v. Brown, (1970) 2 Or App 123, 467 P2d 119; Smith v. Smith, (1970) 2 Or App 398, 467 P2d 670, Sup Ct review denied; Kuckenberg v. Kuckenberg, (1969) 252 Or 647, 452 P2d 305.

A modification of the alimony clause of a divorce could be made only by a motion in the original suit. Corder v. Speake, (1900) 37 Or 105, 51 P 647.

Ordinarily a decree for alimony would be treated as final upon conditions known or existing, but alterable on change of conditions. Brandt v. Brandt, (1902) 40 Or 477, 67 P 508.

Where a husband had been relieved by modification on remarriage of his former wife, he ought not to have been required to resume former payments. Id.

An order for alimony was appealable, although always subject to modification. Jolliffe v. Jolliffe, (1923) 107 Or 33, 213 P 415.

A n alimony decree based on former earning should have been modified where the husband had become a helpless paralytic retired on a meager pension and dependent on his second wife. Andrews v. Andrews, (1933) 144 Or 200, 24 P2d 332.

Remarriage of wife entitled husband to relief from alimony payments by modification of stipulated agreement embodied in decree. Warrington v. Warrington, (1938) 160 Or 77, 83 P2d 479. **Contra,** a decree carrying into effect a fair settlement for alimony could not afterwards be modified by court without consent of both parties. Henderson v. Henderson, (1900) 37 Or 141, 60 P 597, 61 P 136, 48 LRA 766. **Distinguished in** Phy v. Phy, (1925) 116 Or 31, 236 P 751, 240 P 237, 42 ALR 588. A stipulated alimony settlement embodied in decree could be modified by court on remarriage of wife unless alimony was in lieu of her claim to property.

Public policy did not favor compelling a divorced husband to support his former wife after her remarriage except under extraordinary circumstances which she herself had to prove. Nelson v. Nelson, (1947) 181 Or 494, 182 P2d 416.

Where evidence established that decree provision awarding money to divorced wife in monthly installments was a property settlement and not alimony, her subsequent remarriage did not affect that provision. Id.

A property settlement which was entered into subsequent to divorce had to be approved by the court in order to be binding on the parties or the court. Feves v. Feves, (1953) 198 Or 151, 254 P2d 694.

The improved financial status of the former husband did not of itself warrant an increase in the amount of alimony; such increase, if any, was largely governed by the necessities of the former wife and the ability of the former husband to pay. Id.

A divorce decree providing for a present transfer of property to the wife, as distinguished from a decree requiring future payments, was not subject to modification. Ross v. Ross, (1965) 240 Or 561, 403 P2d 19.

Evidence of wife's change of circumstances did not warrant radical modification granted by trial court. Abraham v. Abraham, (1967) 248 Or 163, 432 P2d 797.

The mere possibility that husband's financial circumstances might improve in the future was not sufficient grounds for the award of minimal, token or other allowance of alimony. Johnson v. Johnson, (1966) 245 Or 10, 419 P2d 28.

A party who requested modification of a decree for alimony had to allege and prove a change in circumstances of one or the other parties sufficient to justify the modification. Watson v. Watson, (1968) 251 Or 65, 444 P2d 476.

6. Finality of decrees and liens

(1) Under former similar statute. Accrued installments had finality, and their payment could be enforced by a writ of execution. Cousineau v. Cousineau, (1936) 155 Or 184, 63 P2d 897, 109 ALR 643; Stephens v. Stephens, (1942) 170 Or 363, 132 P2d 992.

Court had no power to set aside, alter or modify divorce decree as to unpaid alimony installments or support money for children which had accrued prior to motion for modification. Mason v. Mason, (1934) 148 Or 34, 34 P2d 328; State v. Hall, (1936) 153 Or 127, 55 P2d 1102; Poe v. Poe, (1967) 246 Or 458, 425 P2d 767.

Docketed decree for alimony was lien on husband's land as to accrued and unpaid installments. Forbes v. Jennings, (1928) 124 Or 497, 264 P 856. **But see** Mason v. Mason, (1934) 148 Or 34, 34 P2d 328 and State v. Tolls, (1938) 160 Or 317, 85 P2d 366, 119 ALR 1370.

When divorce decree providing for alimony was entered before the former statute was enacted, and decree was never modified or docketed, it was not final decree; accrued and unpaid alimony was not lien and docketing 13 years later was ineffective. Mason v. Mason, (1934) 148 Or 34, 34 P2d 328.

When in a contempt proceeding the defendant was ordered to pay a certain sum until the date of the modification decree, the court was in error in lowering the payments as of the date of the motion for modification. Shelley v. Shelley, (1955) 204 Or 436, 283 P2d 663.

A decree requiring the payment of money was a judgment enforceable by sale on execution in the same manner as other judgments. Thompson v. Thompson, (1963) 233 Or 262, 378 P2d 281.

7. Vacation of decrees

See also cases under ORS 16.050.

Under a former similar statute, where a decree was regular on its face and the court had jurisdiction of the subject matter, a party against whom the decree was rendered having knowledge of the pendency of the suit and an opportunity to be heard, was not entitled to vacate the decree without pleading and proving a meritorious defense. Smith v. Hickey, (1950) 188 Or 359, 214 P2d 805.

A former similar statute did not authorize the court to vacate a decree with the effect of restoring a marriage relationship. Miller v. Miller, (1961) 228 Or 301, 365 P2d 86.

Denial of motion to vacate decree under former similar statute was proper. Peake v. Peake, (1965) 242 Or 386, 408 P2d 206.

FURTHER CITATIONS: Miller v. Miller, (1913) 67 Or 359, 136 P 15; State v. Langford, (1918) 90 Or 251, 176 P 197; Armstrong v. Vancil, (1942) 169 Or 320, 128 P2d 951; Kern v. Fletcher, (1944) 174 Or 87, 147 P2d 498; State v. Casey, (1944) 175 Or 328, 153 P2d 700, 172 ALR 862; Hagen v. Hagen, (1951) 193 Or 369, 238 P2d 747; Esselstyn v. Casteel,

(1955) 205 Or 344, 286 P2d 665, 288 P2d 214, 288 P2d 215; Wiles v. Wiles, (1957) 211 Or 163, 315 P2d 131; Dent v. Pollard, (1961) 227 Or 399, 362 P2d 324; Cutts v. Cutts, (1961) 229 Or 33, 366 P2d 179; Jackson v. Jackson, (1961) 230 Or 143, 367 P2d 433; Agrue v. Agrue, (1963) 233 Or 456, 378 P2d 965; Sullivan v. Sullivan, (1963) 236 Or 192, 587 P2d 571; Beelman v. Beelman, (1963) 236 Or 221, 387 P2d 987; State ex rel. McKee v. McKee, (1964) 237 Or 583, 392 P2d 645; Springer v. Springer, (1964) 238 Or 198, 394 P2d 431; Palmer v. Berry, (1964) 239 Or 190, 396 P2d 912; Wilson v. Wilson, (1965) 242 Or 201, 407 P2d 898, 408 P2d 940; In re Gardner, (1965) 243 F Supp 258; Hendrix v. Hendrix, (1967) 246 Or 51, 423 P2d 774; Coastal Adjustment Bureau, Inc. v. Wehner, (1967) 246 Or 115, 423 P2d 967; Douthitt v. Kinman, (1967) 246 Or 431, 425 P2d 747; Winston v. Winston, (1967) 246 Or 530, 426 P2d 454; Williams v. Williams, (1967) 248 Or 265, 433 P2d 615; McLaughlin v. McLaughlin, (1969) 253 Or 447, 454 P2d 857; Rayner v. Rayner, (1969) 253 Or 523, 454 P2d 856; Whitten v. Whitten, (1969) 254 Or 112, 458 P2d 446; Mackey v. Mackey, (1969) 1 Or App 177, 460 P2d 371; Stonebrink v. Stonebrink, (1970) 2 Or App 328, 468 P2d 546; Howser v. Howser, (1970) 2 Or App 474, 469 P2d 790; Brown v. Brown, (1971) 4 Or App 253, 481 P2d 643.

ATTY. GEN. OPINIONS: Finality of accrued maintenance payments for child, 1928-30, p 433, 1940-42, p 224, 1940-42, p 523; docketing judgments for maintenance payments for children, 1940-42, p 224; effect of divorce on maintenance payments to insane wife, 1942-44, p 232; modification of decree which had no alimony provision, 1942-44, p 232; relief by district attorney from decree, 1942-44, p 232; docketing of child support decree calling for monthly payments by the father, 1948-50, p 182.

LAW REVIEW CITATIONS: 16 OLR 288; 27 OLR 130; 34 OLR 153; 37 OLR 192, 197; 43 OLR 111, 116-119; 2 WLJ 113, 216-226; 5 WLJ 171-176.

107.142

NOTES OF DECISIONS

1. Under former similar statute

Legislation validating marriages contracted within the six-month period applied to marriages entered into in other states. Twigger v. Twigger, (1924) 110 Or 520, 223 P 934.

Son attacking deceased father's marriage with defendant as premature had to show that the marriage was not in all other respects regular, since otherwise it was validated by the 1919 legislation. Id.

"Prior to the passage of this act," as used in the 1947 validating statute, meant prior to the date of signature by the Governor, so a marriage contracted within six months of a divorce decree but after that date was not validated. Brassfield v. Brassfield, (1948) 183 Or 217, 191 P2d 639.

The statute did not validate marriage contracted during the prohibited six months when one of the parties so contracting was dead on the effective date of the validating legislation. Wright v. Kroeger, (1959) 219 Or 102, 345 P2d 809.

FURTHER CITATIONS: Marcus v. Marcus, (1944) 173 Or 693, 147 P2d 191.

ATTY. GEN. OPINIONS: Effect of validating statute when one party has died, 1944-46, p 190; effect of this statute on foreign marriages, 1948-50, p 60.

LAW REVIEW CITATIONS: 11 OLR 162, 186; 23 OLR 132; 28 OLR 368; 37 OLR 82; 39 OLR 133.

107.210

NOTES OF DECISIONS

Under a former similar statute, wife's suit for separate maintenance was barred by prior decision in divorce suit fixing blame on both spouses. Matlock v. Matlock, (1917) 86 Or 78, 167 P 311.

Under former similar statute, separate support and maintenance suit could not be based on void marriage. Kiessenbeck v. Kiessenbeck, (1933) 145 Or 82, 26 P2d 58.

By providing for awarding custody of children to the party less in fault the legislature impliedly recognized that a decree of separation might be granted to a litigant who was not entirely free from fault. Fritz v. Fritz, (1946) 179 Or 612, 174 P2d 169.

A decree of separate maintenance rendered by a court of Oregon in favor of a wife does not survive a subsequent decree of divorce entitled to full faith and credit which has been granted the husband by a sister state. Rodda v. Rodda, (1948) 185 Or 140, 200 P2d 616, 202 P2d 638, cert. denied, 337 US 946, 69 S Ct 1504, 93 L Ed 1749.

A court may determine the validity of a Nevada divorce decree set up as a defense to an action for spearation under this section. Kelley v. Kelley, (1948) 183 Or 169, 191 P2d 656.

Wife's suit for separation from bed and board on grounds of desertion is not controlled by finding as to desertion in prior action for support money under statute now repealed. Id.

Evidence supported separation decree on grounds of cruel and inhuman treatment and personal indignities. Marcus v. Marcus, (1944) 173 Or 693, 147 P2d 191; Wiggins v. Wiggins, (1944) 174 Or 181, 148 P2d 793.

A wife was not barred from suit for separation under this section although awarded support money under statute now repealed. Kelley v. Kelley, (1948) 183 Or 169, 191 P2d 656.

FURTHER CITATIONS: Chipman v. Chipman, (1965) 241 Or 393, 406 P2d 150.

ATTY. GEN. OPINIONS: District attorney's appearance in separation suits, 1942-44, p 128.

LAW REVIEW CITATIONS: 31 OLR 62.

107.220

CASE CITATIONS: Kelley v. Kelley, (1948) 183 Or 169, 191 P2d 656.

107.230

LAW REVIEW CITATIONS: 31 OLR 62.

107.240

CASE CITATIONS: Kelley v. Kelley, (1948) 183 Or 169, 191 P2d 656.

LAW REVIEW CITATIONS: 2 WLJ 183-206.

107.250

NOTES OF DECISIONS

See also cases under "Suit money and maintenance" under ORS 107.095.

Under former similar statute, custody award pendente lite could not in first instance be enforced by Supreme Court. Noble v. Noble, (1940) 164 Or 538, 103 P2d 293.

Allowance of additional attorney's fees and judgment for delinquent support payments were properly included in

decree granted defendant in cross-suit for separation from bed and board. Oliver v. Oliver (1959) 216 Or 5, 337 P2d 318.

LAW REVIEW CITATIONS: 39 OLR 134.

107.260

NOTES OF DECISIONS

Under former similar statute, adopted child had same status as child born of marriage, and husband can be required to provide for maintenance. Wertz v. Wertz, (1928) 125 Or 53, 263 P 911.

By providing for awarding custody of children to the party less at fault, the legislature impliedly recognized that a decree of separation might be granted to a litigant who was not entirely free from fault. Fritz v. Fritz, (1946) 179 Or 612, 174 P2d 169.

FURTHER CITATIONS: Reid v. Reid, (1966) 244 Or 396, 418 P2d 517; Protrka v. Palmer, (1967) 246 Or 467, 423 P2d 514.

LAW REVIEW CITATIONS: 43 OLR 114.

107.280

CASE CITATIONS: Protrka v. Palmer, (1967) 246 Or 467, 423 P2d 514.

LAW REVIEW CITATIONS: 28 OLR 156, 170.

107.290

CASE CITATIONS: Brown v. Brown, (1971) 4 Or App 253, 481 P2d 643.

LAW REVIEW CITATIONS: 5 WLJ 171-176.

107.300

CASE CITATIONS: Marcus v. Marcus, (1944) 173 Or 693, 147 P2d 191.

107.310

NOTES OF DECISIONS

To actually hand an out-of-state summons to a person is not constructive service. Brown v. Brown, (1968) 249 Or 274, 437 P2d 845.

LAW REVIEW CITATIONS: 31 OLR 62.

107.320

NOTES OF DECISIONS

The trial court has power to grant a separation from bed and board after finding that there is no basis for a decree of divorce. Banick v. Banick, (1963) 235 Or 70, 383 P2d 775.

LAW REVIEW CITATIONS: 43 OLR 106.

107.405

NOTES OF DECISIONS

Former similar statute did not repeal the restrictive term "party at fault" in divorce statute. Moreland v. Moreland, (1962) 232 Or 309, 374 P2d 741, 375 P2d 242.

FURTHER CITATIONS: Banick v. Banick, (1963) 235 Or 70, 383 P2d 775; Protrka v. Palmer, (1967) 246 Or 467, 423 P2d 514; Kuckenberg v. Kuckenberg, (1969) 252 Or 647, 452 P2d 305; Cooley v. Cooley, (1969) 1 Or App 223, 461 P2d 65.

LAW REVIEW CITATIONS: 43 OLR 111.

107.425

NOTES OF DECISIONS

Under former similar statute, unless both parties consented to its being read in their absence, a report made under the statute could not be read by the judge unless the reading was done in open court, under circumstances in which either party had an opportunity to object and to exclude portions which did not satisfy the rules of evidence. Kightlinger v. Kightlinger, (1968) 249 Or 521, 439 P2d 614; Green v. Haugen, (1969) 1 Or App 1, 457 P2d 655; Norris v. Norris, (1969) 1 Or App 122, 459 P2d 890.

Under former similar statute, if a report made pursuant to the statute was considered by the trial court but not included in the record on appeal, the record was incomplete and the case could not be tried de novo on appeal. Green v. Haugen, (1969) 1 Or App 1, 457 P2d 655; Nichols v. Nichols, (1970) 3 Or App 103, 471 P2d 841.

FURTHER CITATIONS: Goode v. Goode, (1970) 4 Or App 34, 476 P2d 805.

ATTY. GEN. OPINIONS: Investigator in district attorney office serving as candidate's campaign chairman, 1964-66, p 452.

LAW REVIEW CITATIONS: 39 OLR 134; 43 OLR 119; 46 OLR 80.

107.510 to 107.610

LAW REVIEW CITATIONS: 43 OLR 98-105.

107.520

ATTY. GEN. OPINIONS: Complaint and bill of particulars under Conciliation Service Act, 1964-66, p 50.

LAW REVIEW CITATIONS: 46 OLR 80; 2 WLJ 134-148.

107.530

LAW REVIEW CITATIONS: 43 OLR 104.

107.550

CASE CITATIONS: Lee v. Lee, (1969) 1 Or App 115, 459 P2d 442, Sup Ct **review denied.**

107.560

NOTES OF DECISIONS

Conciliation court does not have authority to extend its jurisdiction under the same petition for more than the original 45 days. Lee v. Lee, (1969) 1 Or App 115, 459 P2d 442, Sup Ct **review denied.**

107.580

LAW REVIEW CITATIONS: 43 OLR 104.

107.600

ATTY. GEN. OPINIONS: Confidentiality of student records at higher education institutions, (1968) Vol 34, p 70.