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An act to provide for the compensation of the members of the general assembly.

Colorado General Assembly

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Colorado General Assembly, "An act to provide for the compensation of the members of the general assembly." (1877). *Session Laws 1861-1900*. 1286.

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1301. SEC. 2. Inasmuch as it is believed that the pres- Emergency.
ent general assembly will adjourn *sine die* within ninety days
from the passage of this act, with no provision for the pay-
ment of its members except as herein provided, therefore,
this act shall take effect and be in force from and after its
passage.

Approved, December 23, 1876.

AN ACT TO PROVIDE FOR THE COMPENSATION OF THE MEMBERS OF
THE GENERAL ASSEMBLY

Be it enacted by the General Assembly of the State of Colorado:

1302. SECTION 1. That hereafter each member of the
general assembly of this state shall receive as compensa- Per diem com-
pensation and
mileage of mem-
bers of general
assembly.
tion for his services the sum of four dollars for each days
attendance, and fifteen (15) cents for each mile necessarily
traveled in going to and from the seat of government by
the most usually traveled route.

Approved, March 7, 1877.

CHAPTER XLIII.

GUARDIAN AND WARD.

[Revised Statutes, Chapter XL.]

1303. SECTION 1. Courts of probate in their respective
counties, shall admit orphan minors above the age of four- When minors
may choose
guardians; when
court to appoint.
teen years, the father being dead, to make choice of guar-
dians, and appoint guardians for such as are under the age
of fourteen years.

1304. SEC. 2. Whenever it shall be represented to said
court that any orphan minor above the age of fourteen Appointment of
guardian by
court if minor
neglects or
refuses to choose
on notification.
years has not a guardian, it shall be the duty of said court
to issue a notification to such minor to appear before the
said court, at a time therein specified, and choose a guar-
dian; and if such minor shall neglect or refuse to appear,
or appearing, shall neglect to choose a guardian, the said
court shall appoint one for such minor, as if such minor
were under the age of fourteen years.

Guardian of
minor having
estate not de-
rived from fath-
er; if other than
father, to have
charge of estate,
but not control
of person of
minor.

1305. SEC. 3. When a minor, having a father living, shall be entitled to, or possessed of, any estate, real or personal, not derived from his or her father, the said court of probate shall notify the father to appear and show cause why a guardian for such minor shall not be appointed; and if sufficient reason be not shown, may appoint the father, if he be a proper person; if not, then such other person as the minor, if of the age of fourteen years, may choose. If such minor shall refuse or neglect, or be not of sufficient age to choose a guardian, the court shall appoint some fit person to be guardian for such minor; and when any person is appointed guardian, other than the father, he shall have the charge and management of the estate, but no control over the person of the minor.

Guardians to
prosecute and
defend for their
wards.

1306. SEC. 4. Guardians, by virtue of their office as such, shall be allowed in all cases to prosecute and defend for their wards.

Bond of guard-
ian; amount,
security and
condition.

1307. SEC. 5. The court of probate shall take, of each guardian appointed under this chapter, bond, with good security, in a sum double the amount of the minor's estate, real and personal, conditioned as follows: The condition of this obligation is such, that if the above bounden A. B., who has been appointed guardian for C. D., shall faithfully discharge the office and trust of such guardian, according to law, and shall render a fair and just account of his guardianship, to the county court of the county of —, from time to time, as he shall be thereto required by said court, and comply with all the orders of said court, lawfully made, relative to the goods, chattels, and moneys of such minor, and render and pay to such minor all moneys, goods and chattels, title papers, and effects, which may come to the hands or possession of such guardian, belonging to such minor, when such minor shall be thereto entitled, or to any subsequent guardian, should such court so direct, then this obligation shall be void, otherwise to remain in full force and virtue. Which bond shall be taken, to the people of the state of Colorado, for the use of such minor, and shall not become void upon the first recovery, but may be put in suit from time to time against all or any one or more of the obligors, and to the use and benefit of any

Not to be void
on first recovery.

person entitled by a breach thereof, until the whole penalty shall be recovered thereon. In all cases of any person being appointed guardian for more than one ward, at one time, the judge of probate shall include all in one bond.

1308. SEC. 6. Courts of probate shall have power, in their respective counties, with or without previous complaint, by an order duly made and served, to oblige all guardians of minors, from time to time, to render their respective accounts, upon oath, touching their guardianship, to said courts for adjustment, and shall have power to compel such guardians to give supplementary security whenever it shall judge proper, and in default thereof to remove such guardians.

Accounts of guardians; supplementary security.

1309. SEC. 7. The court of probate, in all cases, shall have power to remove guardians for good and sufficient reasons, which shall be entered upon record, and to appoint others in their place, or in the place of those who may die, who shall give bond and security for the faithful discharge of their duties as heretofore prescribed in this chapter; and when any guardian shall be removed, or die, and a successor be appointed, the court shall have power to compel such guardian so removed, or the executors or administrators of a deceased guardian, to deliver up to such successor all goods, chattels, moneys, title papers or other effects belonging to such minor, which may be in the possession of such guardian so removed, or of the executors or administrators of a deceased guardian, or of any other person or persons who may have the same, and upon failure, to commit the party offending to prison until he, she or they comply with the order of the court.

Removal of guardian for cause; delivery of property and effects of minor to successor.

1310. SEC. 8. Guardians shall have power to demand; sue for and receive all moneys belonging to their wards, from executors or administrators, as soon as the same may be collected; or of any other person or persons in whose hands or possession the same may be; and it shall moreover be their duty to put to interest the moneys of their wards, upon mortgage security, to be approved by the court; which letting shall always be for one year, and at the end of each year the interest shall be added and made part of the principal; and said guardian shall also have

Powers and duties of guardians in relation to moneys and estate of wards.

power to lease the real estate of the ward, upon such terms and for such length of time as the court of probate shall direct: *Provided*, such leasing shall never be for a longer time than during the minority of the ward, and the minority of females shall cease at the age of eighteen years.

Education and
nurture of ward;
payments for out
of ward's estate.

1311. SEC. 9. The guardian shall have power, under the direction of the court of probate, to superintend the education and nurture of the ward, and for that purpose may pay out such portions of the ward's money as the court of probate shall from time to time by order direct: *Provided*, that the rents and profits arising from his estate, and next the interest on the ward's money, shall always be first resorted to for the education and nurture of the ward.

Sale of real
estate of ward.

1312. SEC. 10. The district court may, for just and reasonable cause, being satisfied that the guardian has faithfully applied all the personal estate, order the sale of the real estate of the ward, on the application of the guardian by petition in writing stating the facts, and having given notice to all persons concerned, of such intended application, in some public newspaper printed in the state, or by setting up written notices in three of the most public places in the county, at least three weeks before the sitting of the court; such order may enable the guardian to sell and convey the real estate for the support and education of the ward, or to invest the proceeds in other real estate. The court, in such order, shall direct the time and place of sale, the notice thereof to be given, and may direct the sale to be made on reasonable credit, and require such security from the guardian and purchaser as the interest of the ward may require. It shall be the duty of the guardian making such sale, as soon as may be, to make return of such proceedings to the court granting the order, which, if approved by the court, shall be recorded, and shall vest in the purchasers all the interest the ward had in the estate so sold; application for the sale of such real estate shall be made to the court of the county where the whole or part of the estate shall be situated.

1313. SEC. 11. An account of all moneys received by any guardian for any sale of real estate of any minor, as afore-

said, shall be returned on oath, by such guardian, to the court of probate of the county where letters of guardianship were obtained, and such moneys shall be accounted for, and shall be subject to the order of the court of probate, in like manner as other moneys belonging to such minor.

In what manner moneys received from sale of ward's estate to be accounted for.

1314. SEC. 12. Appeals shall be allowed, in all cases, from the order or judgment of the court of probate, the same in manner as is provided by law relative to wills and testaments, for executors and administrators and the settlement of intestates' estates.

Appeals from judgment of court of probate.

1315. SEC. 13. Minors may bring suits in all cases whatever, by any person they may select as their next friend; and the person so selected, shall file bond, with the clerk of the district court, or justice of the peace, before whom the suit may be brought, acknowledging himself bound for all costs that may accrue and legally devolve on such minor; after such bond shall have been so filed, said suit shall progress to final judgment and execution, as in other cases.

Minors may sue by next friend; bond of cost to be filed.

1316. SEC. 14. Guardians shall educate their wards; and it is hereby made the duty of all civil county officers to give information to the court of probate of neglect or omission of any guardian to educate his or her ward; *provided*, when there are not moneys sufficient to teach the ward to read and write, and ground rules of arithmetic, and the guardian refuses and neglects to have him so educated, the court shall have power to put out to any other person, the ward, for the purpose of having the same so educated; the judge of probate shall, in all cases when information is made of the neglect of any guardian to educate his or her ward, and on the facts being established, to remove such guardian, and appoint a suitable person to act as guardian, and superintend the education of such minor orphan.

Education of wards.

1317. SEC. 15. Guardians shall have power to loan out the moneys of their wards, at interest, in sums not exceeding one hundred dollars, on personal security, to be approved by the judge of probate: *Provided*, it shall not be let for a longer time than twelve months without renewal, and an approval of the security by the court, and if neg-

How money of wards may be loaned.

lected longer, it shall be at the responsibility of the guardian. In all cases of any person being appointed guardian for more than one ward, at one time, the judge of probate shall include all in one bond.

Confirmation of guardians.

1818. SEC. 16. Guardians on final settlement shall be allowed such fees and compensation for their services as shall seem reasonable and just to the judge of probate, not exceeding what are or shall be allowed by law to administrators.

Disposition of tuition and custody of minor by deed or will of parent.

1819. SEC. 17. Every father of sound mind and memory of a child likely to be born, or of any living child under the age of twenty-one years, and unmarried, may, by his last deed or will duly executed, dispose of the custody and tuition of such child during its minority, or for a less time, to any person or persons in possession or remainder; and every mother of sound mind and memory, being sole, may, in like manner, dispose of the custody and tuition of a child living, if a father has made no such disposition, or in any other manner restrained the right of the mother.

Rights, duties and powers of custodian of minor under will or deed.

1820. SEC. 18. Every such disposition, from the time it shall take effect, shall invest in the person or persons to whom it shall be made, all the rights and powers, and subject him or them to all the duties and obligations of a guardian of such minor, and shall be valid and effectual against every other person claiming the custody and tuition of such minor: *Provided*, that the rights, powers, duties and obligations of such person or persons may be restrained and regulated by the person making such deed or last will, as aforesaid.

Maintenance of action for attention of minor by custodian; custody and management of real estate.

1821. SEC. 19. Any person to whom the custody of any minor is so disposed of, may take the custody and tuition of such minor, and may maintain all proper actions for the wrongful taking or detention of the minor; he shall also take the custody and management of the real and personal estate of such minor, unless restrained by the deed or will, as aforesaid, during the time for which such disposition shall have been made, and bring such actions in relation thereto as a guardian appointed under the provisions of the laws of this state.

1822. SEC. 20. Guardians appointed under the provis-

ions of this chapter, shall be subject to removal, upon complaint of any person in behalf of the minor, to the district court of the county in which such guardian may reside, and proof made of mal-conduct or misbehavior in the performance of his duties, or of a failure to perform his duties; and upon the removal of a guardian, the said court is hereby vested with the power to appoint another guardian, and to make all such orders as may be necessary to compel the guardian removed to deliver over to his successor the custody of the minor, and to account for the estate, and pay over all moneys belonging to the ward, and to compel such successor to execute a bond, with good security, in such penal sum, and with such conditions as the court may deem necessary for the security of the rights of the minor; and the said court shall also have power, upon application of any person in behalf of the minor, to require all guardians appointed under the provisions of this chapter, by the father or mother, or by the court, to give bond and security, in such penalty and with such conditions as the court may deem necessary for the security and protection of the minor, and of his or her estate.

Removal of guardian and appointment of successor by district court.

CHAPTER XLIV.

HABEAS CORPUS.

[Revised Statutes, Chapter XLI.]

1323. SECTION 1. If any person shall be committed or detained for any criminal or supposed criminal matter, it shall and may be lawful for him to apply to the supreme or district courts, in term time, or any judge thereof in vacation, for a writ of *habeas corpus*; which application shall be in writing, and signed by the prisoner or some person on his behalf, setting forth the facts concerning his imprisonment, and in whose custody he is detained, and shall be accompanied by a copy of the warrant or warrants of commitment, or an affidavit that the said copy has been demanded of the person in whose custody the prisoner is detained, and by him refused

Who may grant writ; proceedings necessary therefor.