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1877

### An act to provide for the exercise of the right of eminent domain.

Colorado General Assembly

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Time of completion of registry.

Penalty for adding names to registry after close of registration.

Fines for benefit of school fund.

Repeal.

be completed on the evening next preceding each and every election appointed by law to be held in each and every precinct, and no names shall be added to the registry list in any ward or precinct, after the close of the registration on the day preceding such election; and in case any judge of elections, or person acting as member of any board of registry shall wilfully and knowingly add any name or names of any person, or any fictitious or false name to the list of registered voters in any ward or voting precinct after the close of the registry of voters' names, on the next day preceding any election in such ward or voting precinct, according to law, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be punished by a fine of not less than two hundred (200) dollars, nor more than five hundred (500) dollars, for each and every offense.

1056. SEC. 131. All fines or forfeitures collected under the provisions of this act, shall be paid to the county treasurer of the county wherein the offense was committed, for the benefit of the school fund of such county.

1057. SEC. 132. That all acts and parts of acts enacted by any territorial legislature, relating to elections, be, and the same are hereby repealed.

Approved, March 8, 1877.

## CHAPTER XXXI.

### EMINENT DOMAIN.

#### AN ACT TO PROVIDE FOR THE EXERCISE OF THE RIGHT OF EMINENT DOMAIN.

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

In what manner compensation for private property taken for public or private use shall be ascertained.

1058. SECTION. 1. That private property shall not be taken or damaged for public or private use without just compensation; and in all cases in which compensation is not made by the state in its corporate capacity, such compensation shall be ascertained by a board of commissioners of not less than three freeholders, or by a jury when required by the owner of the property, as hereinafter prescribed.

1059. SEC. 2. That in all cases where the right to take private property for public or private use without the owner's consent or the right to construct or maintain any railroad, public road, toll-road, ditch, bridge, ferry, telegraph, flume or other public or private work or improvement, or which may damage property not actually taken, has been heretofore or shall hereafter be conferred by general law or special charter, upon any corporate or municipal authority, public body, officer or agent, person or persons, commissioner or corporation, and the compensation to be paid for, or in respect of the property sought to be appropriated or damaged, for the purposes above mentioned, cannot be agreed upon by the parties interested; or in case the owner of the property is incapable of consenting, or his name or residence is unknown, or he is non-resident of the state, it shall be lawful for the party authorized to take or damage the property so required, or to construct, operate and maintain any railroad, public road, toll-road, ditch, bridge, ferry, telegraph, flume or other public or private work or improvement, to apply to the judge of the district or county court, either in term time or vacation, where the said property or any part thereof is situate, by filing with the clerk a petition, setting forth by reference, his or their authority in the premises; the purpose for which said property is sought to be taken or damaged; a description of the property, the names of all persons interested therein as owners or otherwise, as appearing of record, if known, or if not known, stating that fact, and praying such judge to cause the compensation to be paid to the owner, to be assessed. If the proceedings seek to affect the property of persons under guardianship, the guardians or conservators of persons having conservators, shall be made parties defendant, and if of married women, their husbands shall also be made parties. Persons interested whose names are unknown may be made parties defendant by the description of the unknown owners; but in all such cases an affidavit shall be filed by, or on behalf of the petitioner, setting forth that the names of such persons are unknown. In cases where the property is sought to be taken or damaged by the state for the purpose of establishing, operating or maintaining any state-house, or charitable

Manner of proceeding in case of disagreement, or where party is incapable, unknown or non-resident.

or other state institution or improvement, the petition shall be signed by the governor or such other person as he shall direct, or as shall be provided by law.

Application to  
judge made in  
vacation.

1060. SEC. 3. If such petition be presented to a judge in vacation, the judge shall note thereon the day of presentation, and shall also note thereon the day when he will hear the same, and shall order the issuance of summons to each resident defendant, and the publication of notice to each non-resident defendant, and the clerk of the court shall at once issue the summons and give notice accordingly.

Summons and  
publication of  
notice.

1061. SEC. 4. Such summons shall be made returnable on such day and hour as the court or judge may fix and determine, not less than ten (10) days after the issuance of such summons, and the same shall be served in the same manner, as in other cases, at least ten (10) days before the return day thereof. When it appears that the owners or any of them, of the property sought to be condemned are non-resident, the court or judge shall order a notice to be published in some newspaper published in said county, addressed to such non-resident owner or owners, in which notice shall be stated the name of the petitioner or petitioners, a full and accurate description of the property sought to be taken or condemned, the purpose for which such condemnation is asked, and the time and place when such non-resident owner is required to appear, and the title of the court, or name of the judge before whom said application is to be heard. The court or judge shall also fix and determine when said notice shall be made returnable, but in no case shall it be made returnable in less than thirty (30) days, and the same shall be published at least four times in some weekly newspaper before the return day thereof. If there shall be no weekly newspaper published in the county, in which such proceedings are had, the court or judge shall direct that said notice be published in some newspaper named by him, published at the nearest convenient place to such county.

1062. SEC. 5. Causes may be heard by such judges in vacation as well as in term time, but no cause shall be heard earlier than ten (10) days after service upon defendant, or upon due publication against non-residents. Any

number of separate parcels of property situate in the same county, may be included in one petition, and the compensation for each shall be assessed separately, by the same or different commissions or juries, as the court or judge may direct. Amendment to the petition, or to any paper or record in the cause may be permitted whenever necessary to a fair trial and final determination of the questions involved. Should it become necessary at any stage of the proceeding to bring a new party before the court or judge, the court or judge shall have the power to make such rule or order in relation thereto as may be deemed reasonable and proper; and shall also have power to make all necessary rules and orders for notice to parties of the pendency of the proceeding, and to issue all process necessary to the execution of orders and judgments as they may be entered.

When cases shall be heard. Separate parcels included in one petition. Amendments to petition and new parties.

1063. SEC. 6. The court or judge may adjourn the proceedings from time to time, shall direct any future notice thereof to be given that may seem proper, shall hear proofs and allegations of all parties interested touching the regularity of the proceedings, and shall, by an entry in its minutes, appoint a board of commissioners of not less than three freeholders, to ascertain and determine the necessity for taking such lands, franchises or other property, and to appraise and determine damages, and compensation to be allowed to the owner and person interested in the real estate or property proposed to be taken or damaged in such county, for the purposes alleged in the petition, and said court or judge shall fix the time and place for the first meeting of such commissioners. The said commissioners, before entering upon the duties of their office, shall take an oath to faithfully and impartially discharge their duties as said commissioners, and any one of them may administer oaths to witnesses produced before them; they may issue subpoenas and compel witnesses to attend and testify, and may adjourn and hold meetings for that purpose. They shall hear the proofs and allegations of the parties, and after viewing the premises, shall, without fear, favor or partiality, ascertain and certify the compensation proper to be made to said owner or parties interested, for the

Proceedings in court.

Duties and powers of commissioners.

Certificate of  
ascertainment  
or assessment of  
compensation.

Upon entry of  
rule petitioner  
to become seized  
in fee.

Petitioner not to  
have title to  
mineral veins  
or deposits.

lands, real estate or claims to be taken or affected, as well as all damages accruing to the owners or parties interested in consequence of the condemnation of the same, taken or injuriously affected, as aforesaid. They shall make, subscribe, and file with the clerk of the court in which such proceedings are had, a certificate of their said ascertainment and assessment, in which such lands, real estate or claims shall be described, with convenient certainty and accuracy. The court or judge, upon such certificate or verdict of a jury as hereinafter provided, and due proof that such compensation and separate sums, if any be certified or found to have been paid to the parties entitled to the same, or have been deposited to the credit of such parties in court, or with the clerk of the court, for that purpose, shall make and cause to be entered in its minutes, a rule, describing such lands, real estate or claims in manner aforesaid, such ascertainment of compensation, with the mode of making it, and each payment or deposit of the compensation as aforesaid, a certified copy of which shall be recorded and indexed in the recorder's office of the proper county, in like manner and with like effect as if it were a deed of conveyance from the said owners and parties interested, to the proper parties. Upon the entry of such rule the said petitioner shall become seized in fee except as hereinafter provided, of all such lands, real estate or claims described in said rule, as required to be taken as aforesaid, and may take possession of, and hold and use the same for the purposes specified in said petition, and shall thereupon be discharged from all claims for any damages by reason of any matter specified in such petition, certificate or rule of said court or judge: *Provided*, any such right of way shall never give the petitioner any right, title or interest to any vein, ledge, lode or deposit found or existing in the premises condemned. And if at any time after an attempted or actual ascertainment of compensation under this act, or any purchase or by donation to said petitioner, of any lands, real estate or claims, for purposes specified in the petition, it shall appear that the title acquired thereby, to all or any part of such lands for the use of such petitioner, or if said assessment shall fail or be deemed defec-

tive, the said petitioner may proceed and perfect such title by procuring an ascertainment of the compensation proper to be made to any person who has title, claim or interest in, or lien upon such lands, real estate or claims, and by making payment thereof in the manner hereinafter provided, as near as may be, and at any stage of such new proceedings, or of any proceedings under this act, the court or judge may by rule in that behalf made, authorize the said petitioner, if already in possession, and if not in possession to take possession of and use said premises during the pendency and until the final conclusion of such proceedings, and may stay all actions and proceedings against such petitioner on account thereof. *Provided*, such petitioner shall pay a sufficient sum into court, or to the clerk thereof, to pay the compensation in that behalf when ascertained. *Provided, further*, that the judge of the court before or wherein any such proceedings are had, shall determine the amount such petitioner shall be required to pay or deposit pending any such ascertainment; and in every case where possession shall be so authorized, it shall be lawful for the owner to conduct the proceedings to a conclusion, if the same shall be delayed by the petitioner. The said commissioners shall each receive four (4) dollars per day as compensation for each day actually employed, such compensation to be taxed by the court or judge. If any commissioner so appointed shall die, be unable or fail to serve, the court or judge may appoint another in his place, on reasonable notice of the application.

*Compensation of  
commissioners.*

1064. SEC. 7. Any person, persons or company whose estate or interest is to be affected by the proceeding, may demand at the time of any hearing of such petition, and before the appointment of the commissioners herein provided, a jury of six freeholders residing in the county where such petition is filed, to ascertain, determine and appraise the damages or compensation to be allowed therefor, and thereupon said court or judge shall make an order for the drawing of such jury as herein provided.

*Judge to order  
jury on demand.*

1065. SEC. 8. In cases fixed for hearing of petition in vacation, it shall be the duty of the clerk of the court in whose office the petition is filed, at the time of issu-

Selection of  
jury.

ing summons or making publication, to write the name of twenty-four disinterested freeholders of the county, on twenty-four separate slips of paper, each slip to contain but one name, and shall cause to be selected from said twenty-four names, six of said persons to serve as jurors; such selection to be made by lot and without choice or discrimination; and the said clerk shall thereupon issue *venire* directed to the sheriff of his county, commanding him to summon the six persons so selected as jurors to appear at the court-house in said county, at a time to be named in the *venire*.

Challenges and  
manner of pro-  
ceeding when  
panel exhausted.

1066. SEC. 9. The petitioner and every party interested in the ascertaining of compensation, shall have the same right of challenge of jurors as in other civil cases in the district and county court. If the panel be not full by reason of non-attendance, or be exhausted by challenges, the judge hearing such petition shall designate by name the necessary number of persons of proper qualification, and the clerk or judge shall issue another *venire* returnable instant, and until the jury be full.

Inspection of  
premises by  
jury; delibera-  
tion and verdict.

1067. SEC. 10. When the jury shall have been so selected and taken an oath to faithfully and impartially discharge their duties, said jury shall at the request of either party go upon the land sought to be taken or damaged, in person, and examine the same, and shall then return into court, if the proceedings be in term time, and if in vacation, then before the judge, and the said court or judge shall preside in the same manner and with like power as in other cases; evidence shall be admitted or rejected by the court or judge, according to the rules of law, and at the conclusion of the evidence, the matters in controversy may be argued by counsel to the jury, and at the conclusion of the arguments, the court or judge shall instruct the jury in writing in the same manner as in cases at law. The jury shall retire for deliberation in charge of a sworn officer, the same as in other cases. When such jury shall have agreed upon a verdict, the same shall then be returned into court. If any such jury shall be unable to agree, it may be discharged by such court or judge, and thereupon another jury shall be summoned as soon as



practicable, in the same manner as before, and said court or judge shall have power, and it is hereby made the duty of such court or judge, to continue the proceedings and to summon and empanel a jury or juries until a verdict can be had. Any person, party or corporation feeling aggrieved by any such verdict, may move before such court or judge for a new trial, in the same manner and for the same causes, as in action at law, and the refusal of such court or judge to grant a new trial, may be excepted to and assigned for error. New trial and exceptions.

1068. SEC. 11. The judge or court shall, upon such verdict proceed to adjudge and make such order as to right and justice shall pertain, ordering that petitioner enter upon such property and the use of the same, upon payment of full compensation as ascertained as aforesaid; and such order with evidence of such payment, shall constitute complete justification of the taking of such property. Judgment and order upon verdict.

1069. SEC. 12. Any person not made a party may become such by filing his cross petition, setting forth that he is the owner or has an interest in the property sought to be taken or damaged by the proposed work; and the rights of such last named petitioner shall thereupon be fully considered and determined. New parties.

1070. SEC. 13. In all cases upon final determination thereof in either the district or county court, or before a district or county court judge in vacation, an appeal may be taken to the supreme court in the same manner as provided by law for taking of appeals from the district court to the supreme court; and a writ of error from the supreme court shall lie in every case to bring in review the proceedings therein, after such final determination. Appeals and writs of error.

1071. SEC. 14. In cases in which compensation shall be ascertained as aforesaid, if the owner or owners of the property taken or affected shall appeal or prosecute a writ of error, the petitioner may pay into court or to the clerk thereof, the amount of compensation so ascertained and awarded for the use of the owner or owners, and shall thereupon be entitled to take possession and use the property taken or affected, the same as if no such appeal or writ of error had been taken. The said money so deposited as Possession of property in case of appeal or writ of error.

aforesaid shall remain on deposit until such appeal or writ of error shall have been heard and determined: *Provided, however,* that if the owner or owners shall elect to receive such money before the determination of such appeal or writ of error, said appeal or writ of error shall thereupon be dismissed, so far as such owner or owners are concerned. If the appeal or writ of error shall be taken by the petitioner, the amount of compensation shall nevertheless be paid into court or to the clerk thereof, for the use of the owner or owners of the property condemned or affected before such petitioner shall have the right to take possession of and use said property so condemned or affected; and such compensation may be paid to such owner or owners, at any time before the determination of such appeal or writ of error, upon the execution and delivery of a good and sufficient bond by such owner or owners, with good and sufficient surety or sureties to be approved by said court or judge, in a sum double the amount of such compensation, conditioned that such owner or owners will pay and refund to such petitioner all, or such part of said sum as said owner or owners may be required or adjudged to pay said petitioner, together with the cost of said appeal or writ of error.

Payment of  
compensation.

1072. SEC. 15. Payment of compensation adjudged may in all cases be made to the court or the clerk thereof, who shall on demand, pay the same to the party entitled thereto, taking receipt therefor; or payment may be made to the party entitled thereto, his, her or their conservator or guardian.

Entry of verdict  
and judgment  
of record.

1073. SEC. 16. The court or judge shall cause the verdict of the jury and the judgment of the court to be entered upon the records of said court.

Estimation of  
value and  
damages.

1074. SEC. 17. In estimating the value of all property actually taken, the true and actual value thereof at the time of the appraisement shall be allowed and awarded, and no deduction therefrom shall be allowed for any benefit to the residue of said property; but in estimating damages occasioned to other portions of claimant's property, or any part thereof other than that actually taken, the value of the benefits if any, may be deducted therefrom; *provided, how-*

ever, that in all cases the owner or owners shall receive the full and actual value of all property actually taken, and in case the benefit to the property not actually taken exceed the damage sustained by the owner to property not actually taken, the owner or owners shall not be required to pay, or allow credit for such excess.

1075. SEC. 18. The report of the commissioners or the verdict of the jury, in every case shall state:

What shall be stated in report of commissioners or verdict of jury.

*First*—An accurate description of the land taken.

*Second*—The value of the land or property actually taken.

*Third*—The damages, if any, to the residue of such land or property; and

*Fourth*—The amount and value of the benefit.

1076. SEC. 19. Bills of exception shall be allowed, signed and sealed by the court or judge, as in cases in law, within such reasonable time as shall be fixed by such court or judge.

Bills of exception.

1077. SEC. 20. All laws and parts of laws in conflict with the provisions of this act are hereby repealed; but such repeal shall not impair or affect any act done or any right accrued or acquired under the law so repealed, and all proceedings commenced or pending by virtue of the laws so repealed, may be prosecuted and defended to final determination in the same manner and with the same effect as they might under such laws, notwithstanding such repeal. *Provided*, that this act shall not be construed to repeal any law or part of law upon the same subject passed by this general assembly, but in all such cases this act shall be construed as providing a cumulative remedy.

Repeal; not to affect accrued or acquired rights.

Approved, February 12, 1877.

## CHAPTER XXXII.

### EVIDENCE.

[Revised Statutes, Chapter XXX.]

1078. SECTION 1. The printed statute books of the United States, and of the several states and territories, printed under the authority of such states and territories,