

MAINE STATE LEGISLATURE

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DOCUMENTS

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THE LEGISLATURE

OF THE

STATE OF MAINE,

DURING ITS SESSION

A. D. 1857.

PART SECOND.

AUGUSTA:
STEVENS & BLAINE, PRINTERS TO THE STATE.
1857.

THIRTY-SIXTH LEGISLATURE.

HOUSE.]

[No. 47.]

STATE OF MAINE.

IN THE YEAR OF OUR LORD ONE THOUSAND EIGHT HUNDRED AND
FIFTY-SEVEN.

AN ACT providing for the foreclosure of certain mortgages given to secure the payment of bonds and coupons, issued by railroad corporations.

Be it enacted by the Senate and House of Representatives in Legislature assembled, as follows :

SECTION 1. Whenever a railroad corporation shall
2 have mortgaged its railroad and franchise to secure
3 the payment of any of its bonds or coupons, whether
4 such mortgage was made directly to the holders of
5 such obligations, or to trustees for their use, the
6 refusal or neglect to pay any such bond or coupon
7 within ten days after a presentment, (subsequent to
8 its pay day,) to the treasurer or president for pay-

9 ment, shall be deemed a breach of the condition of
10 the mortgage.

SECT. 2. Upon the breach of such condition, it
2 shall be the duty of the trustees to call a meeting of
3 the bond holders whose bonds or coupons have been
4 dishonored, by giving public notice of the time and
5 place of such meeting, three weeks successively, in
6 the newspaper published by the state printer, and in
7 some newspaper published within the county in which
8 the road extends, the last publication to be at least
9 one week before the time of such meeting. The
10 bond holders assembled at such meeting shall have
11 the power to organize, by the choice of a moderator,
12 and of a clerk who shall be sworn to the discharge
13 of his duty; and to elect by ballot a board of man-
14 agers, not exceeding three in number, for the purpose
15 of aiding and acting with the trustees in running and
16 managing said road. At such meetings, each bond-
17 holder shall have one vote for every hundred dollars
18 of bonds by him owned and produced. It shall be
19 the duty of the trustees, (provided they shall be so
20 instructed by bond holders,) and they are hereby au-
21 thorized, upon its being proved to them that the

22 coupons or bonds of the road secured in the mortgage
23 to them, have been, and remain dishonored, without
24 further process, or by action at law, to enter upon
25 and take possession of such road, and of all the roll-
26 ing stock and other property covered by the mortgage,
27 for the purpose of running and managing such road,
28 and applying the net proceeds thereof according to
29 the legal rights of the parties interested. And such
30 trustees and the managers aforesaid, are hereby au-
31 thorized, as fully as a board of directors for the time
32 being, to take charge of and run such road, to appoint
33 the requisite officers and agents, and to discharge the
34 same, to fix the rate of fare and tolls, and to demand
35 and receive the same, and to do all things in the
36 premises, that a board of directors might do; and they
37 may, with the bond holders, constitute themselves a
38 corporation for the time being, by the name of "The
39 Trustees and Managers" of the railroad so run by
40 them, with the right to prosecute and defend suits in
41 such name, and to do all other things which such
42 corporation might legitimately do. It shall be their
43 duty, after paying the running expenses, to apply
44 sufficient of the earnings to keep the road in repair

45 and prevent any deterioration thereof, and to provide
46 such new rolling stock as may be necessary, and then
47 to apply the balance according to the legal rights of
48 the parties having claims against such road. Said
49 trustees and managers shall act as a board, and their
50 personal liability shall extend to contracts made by
51 them; *provided*, that the funds in the hands of said
52 trustees, or of the treasurer appointed by such new
53 company, (who shall give satisfactory bond for the
54 performance of his duties,) shall be subject, after the
55 payment of personal liabilities on account of said
56 road, to the payment of such damages as shall arise
57 from any misfeasance in the management of said road.
58 Said managers shall hold their place during the
59 pleasure of the bond holders, who may at any subse-
60 quent meeting elect others in their place, and may
61 prescribe at any meeting the compensation which
62 they and the trustees shall receive; and when all
63 dishonored bonds and coupons shall be paid, said
64 trustees shall relinquish the running of said road.
65 It shall be the duty of said trustees to cause a fair
66 and exact account to be kept of the receipts and dis-
67 bursements, and to exhibit the same to any officer of

68 the corporation or other person interested, whenever
69 thereto requested. Without impairing the rights of
70 parties who shall see fit to enforce them at law, the
71 supreme judicial court, as a court of equity, shall
72 have jurisdiction of all matters arising under the pro-
73 visions of this bill, to be presented and acted upon as
74 other questions arising in equity in this state.

SECT. 3. In order to obtain a foreclosure of the
2 mortgage, the holders of any such dishonored bonds
3 or coupons, may apply to the trustees under the deed
4 securing the same, to have such mortgage foreclosed,
5 and it shall be the duty of such trustees upon appli-
6 cation of bond-holders, to an amount equal to one
7 tenth of the amount of such mortgage, immediately to
8 give public notice three weeks successively, in the news-
9 paper published by the state printer, and in a news-
10 paper published in each of the counties into which
11 said road extends, if any shall be published therein,
12 stating the date and conditions of the mortgage, and
13 the claim of the applicants under it, and that the
14 conditions thereof has been broken, by reason whereof
15 they claim a foreclosure; and they shall cause a copy
16 of such printed notice, and the name and date of

17 each of said newspapers containing it, to be recorded
18 in each of such counties, in its registry of deeds,
19 within sixty days from the time of the first publication.
20 And unless, within three years from the time of such
21 first publication, the property shall be redeemed by
22 the mortgagors or persons claiming under them, the
23 right of redeeming shall be forever foreclosed, unless
24 some bill in equity to redeem founded on payment or
25 on an adequate and sufficient tender, had then previ-
26 ously been commenced.

SECT. 4. Upon the completion of such recordings,
2 the procedure for foreclosure, shall enure to the bene-
3 fit of all the holders of any such bonds or coupons,
4 which, at the time of such completion, had been dis-
5 honored as above described ; and it is only upon the
6 payment or tender of payment of all such bonds and
7 coupons, that the foreclosure shall be prevented, pro-
8 vided that tender may be made at the office of the
9 treasurer of such corporation, at any time after the
10 notice, and before the foreclosure shall become abso-
11 lute ; and it shall be the duty of the holder of such
12 dishonored bonds or coupons, to present them at the
13 office of the treasurer thirty days before the time of

14 redemption shall expire, and such mortgage shall not
15 be foreclosed by reason of the non-payment of any
16 not so presented; *provided*, the money shall be provided
17 and kept for the payment thereof, for the last ten days
18 before the expiration of such foreclosure at said treas-
19 urer's office.

SECT. 5. If the foreclosure be effectuated, it shall
2 enure to the benefit of all the holders of bonds and
3 coupons provided for in its condition. And they,
4 their assigns and successors, are hereby constituted a
5 company, incorporated and chartered as of the day of
6 the foreclosure, for all the purposes of the original
7 company, with all the chartered and franchise rights
8 and immunities, which pertained to the original com-
9 pany at the time of the foreclosure ; and it shall be
10 the duty of trustees, by suitable deed of release, to
11 convey such new company all the rights and interest
12 by them held in said road and appurtenances, and
13 other property, by virtue of their deed of trust and
14 the foreclosure thereof, and if they neglect or refuse
15 so to do, the court upon application in equity, shall
16 have power to compel them so to do.

SECT. 6. This new corporation, though a distinct

2 one, may, for the calling of its first meeting, retain the
3 same name with the old one ; but shall at that meet-
4 ing adopt a new corporate name, such as it shall
5 choose to take, by which name it shall always after-
6 wards be known. Its first meeting may be called in
7 the same manner as was authorized for calling the
8 first meeting of the original company. And the new
9 corporation shall have full right to take and retain
10 the possession and use of the mortgaged property,
11 notwithstanding the pendency of any bill in equity
12 to redeem.

SECT. 7. Upon the hearing of any bill in equity
2 to redeem, commenced as mentioned in the third sec-
3 tion, the new corporation may become a party and
4 defend ; and the court, if the bill be sustained by the
5 answer, and proofs or otherwise, may decree a re-
6 demption and a return of the property, on such terms
7 and conditions as equity may require, giving such
8 effect, as to rents and profits on the one hand, and as
9 to necessary expenditures on the other, as pertains in
10 equity to the redemption of mortgaged lands ; and
11 may effectuate its decrees by all needful warrants and
12 processes.

SECT. 8. The original corporation shall continue
2 in existence for the sole purpose of collecting and
3 paying its debts, and bringing its unsettled matters to
4 a close. The foreclosure of the mortgage and conse-
5 quent transfer of the mortgaged property, as above
6 provided for, shall not impair the rights of recovery
7 against the corporation or its stockholders, which any
8 person may have, either on contract or other cause of
9 action. But in suits founded upon any of the bonds
10 or coupons, secured by the foreclosed mortgage, the
11 actual value of the proportionate part of the property,
12 which passed by the foreclosure, shall be deducted.

SECT. 9. Proceedings under this act for the fore-
2 closure of a subsequent mortgage shall not impair the
3 rights of any party, claiming under a prior mortgage.
4 The new corporation resulting from the foreclosure of
5 a subsequent mortgage shall have all the rights of re-
6 deeming against a prior mortgage, and to the same
7 extent, by bill in equity or otherwise, which the hold-
8 ers of the bonds and coupons secured by such subse-
9 quent mortgage, or their mortgage-trustees for them,
10 could have had.

SECT. 10. This act shall take effect, and be in force
2 from and after its approval by the governor.



STATE OF MAINE.

IN SENATE, April 7, 1857.

ORDERED, that 350 copies of the foregoing Bill, be printed for the use of the Legislature.

ATTEST :

JOSEPH B. HALL, *Secretary.*