

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

DOCUMENTS

PUBLISHED BY ORDER OF

THE LEGISLATURE

OF THE

STATE OF MAINE.

1866.



AUGUSTA:
STEVENS & SAYWARD, PRINTERS TO THE STATE.
1866.

FORTY-FIFTH LEGISLATURE.

HOUSE.

No. 52.

STATE OF MAINE.

IN THE YEAR OF OUR LORD ONE THOUSAND EIGHT HUNDRED AND SIXTY-SIX.

AN ACT relating to foreclosure of railroad mortgages.

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

SECTION 1. Sections fifty-three, fifty-four, fifty-five
2 fifty-six, fifty-seven, fifty-eight, fifty-nine, sixty, sixty-
3 one and sixty-two of chapter fifty-one of the revised
4 statutes, and chapter two hundred and sixty-five of
5 the public laws of eighteen hundred and sixty-four,
6 are hereby repealed.

SECT. 2. This act shall take effect from and after
2 its approval.

STATE OF MAINE.

HOUSE OF REPRESENTATIVES, }
February 13, 1866. }

Reported by Mr. FOSTER, from Committee on Judiciary, and
on his motion the same was laid on the table and ordered to be
printed, together with the Report.

F. M. DREW, *Clerk.*

REPORT.

Being unable to agree with the majority of the Committee on the Judiciary, to which was referred the order relating to the repeal of the statutes authorizing the foreclosure of mortgages given by railroad companies to secure their bonds, we beg leave to submit the accompanying bill, together with the reasons of our dissent.

The statute to which the order relates is peculiar to this State. It is believed that no other State or country has any general law whereby men, without a specific grant of the Legislature, can acquire trusts so important as this statute authorizes, by allowing the bondholders, whomsoever they may happen to be, when the foreclosure becomes perfected, to form a new corporation with all the rights and privileges conferred by the original grant. Trusts of so important a nature, and so essential to the public welfare, should, it seems to us, alone be granted to persons whose character and responsibility are well and publicly known.

Neither should railroad companies, without legislative permission in each specific case, be allowed to sell or mortgage their franchise; and it is believed they could not do so prior to the statute in question. They could, at most, only pledge their income and tolls. At the time of the passage of the statute in 1857, we are not aware that there was any exigency calling for it. It is true that railroad stocks were very much depressed, but no more so in this State than in other portions of the Union, owing to the great stagnation in business everywhere. The stock of the New York and Erie Railroad, which then sold in the market for no more than ten cents on a dollar, has since been sold at thirty per cent. above par.

The Kennebec and Portland Railroad, whose earnings were then little more than enough to pay the running expenses, last year showed receipts to the amount of nearly \$600,000. The earnings of railroads in 1855-6-7 and '8 were therefore no safe criterion by

which to judge of their capabilities. It is believed that there is no railroad in this State that, if properly and fairly managed, would not soon make some return to its stockholders. If this law, then, had its origin in what was then supposed to be a public necessity, events have shown that the fears then entertained as to the success of these great enterprises were not well founded. If passed under such a misapprehension, it should cease with its correction.

But there are many reasons to believe that this law, though of a general character, was really passed for purposes of speculation and for selfish ends, and was only put in the form of a general statute the more readily and securely to accomplish the designs of its originators. The end and aim of it seems to be to guarantee the possession, management and ultimate ownership of railroads to the bond-holders, and to surround stockholders with as many embarrassments as possible. It gives to the trustees of the bondholders possession of the road, secures to them all its earnings, and allows them, without personal responsibility, to disburse them as they see fit. The net earnings of the road may be enough, not only to pay the interest, but even the principal of the bonds, each year, and yet they may so apply them within the provisions of this statute, that not a dollar of the interest or principal shall be paid. It thus puts it in the power of the trustees to discredit the bonds and form combinations to buy them in at much less than their real value, so that, when the foreclosure becomes absolute, they and their friends secure the entire road for a mere nominal consideration. The stockholders are entitled of right to have the earnings of the road, over and above the necessary expenses of running it while the bondholders are in possession, applied to the reduction and payment of the liabilities of the company; but this statute affords no sufficient guaranties to that end. Without such application it would be difficult, if not impossible, to procure concert of action among them, surrounded by so many discouragements, so as to raise the funds necessary to redeem.

It seems to us that stockholders are quite as much entitled to the favorable consideration of the Legislature as bondholders. They open up to commerce and civilization, regions which, except for their public spirit and noble sacrifices, would be but the abode of wild beasts or untutored men. These great thoroughfares are chiefly built by public-spirited men, who do not expect immediate

returns, but are willing to trust to the future growth and increased prosperity of the country, to result from their enterprise, for compensation, with full confidence that the Legislature will not allow them to be deprived of their rights by such unjust and inconsiderate legislation as this. There are roads which, for more than twenty years made little, if any, returns to their projectors, that are to day making large dividends and amply compensating them for their sacrifices and patience, thus bearing ample testimony to their wise forecast. Would it not be highly inequitable for the Legislature, in such cases, thus to shut them out from gathering the certain fruits of their labors? The bondholders, by virtue of their mortgage, are entitled to the first earnings of the road, and all its earnings, until they are paid; and if not paid by the earnings, they may collect them of the stockholders in their individual capacity; for the Supreme Court of the United States has recently held, that they are liable, as original promissors, for all the debts of the company, notwithstanding our statutes exempting them from such liability. Thus the stockholders are liable by law for all the debts, and in addition, you, by this statute, practically legislate the road into the hands of their creditors. You thus give them more and better security than even the greatest sharper could ask.

Instead of thus passing laws, so prejudicial to the interests of stockholders, it would seem much more consonant with correct principles and essential justice, for the State to lend them a helping hand in cases of need; since the advantages, which the State derives from the opening up of these great channels of communication, in its developed resources, increased commerce, intelligence and enterprise, are almost incalculable.

The inevitable effect of such legislation, too, is to discourage the construction of railroads, since no man of intelligence would invest a dollar in stock in a new enterprise, while this summary foreclosure is impending, whereby the company is put completely within the power of its creditors. In France, the State takes the management of the railroads, after their construction, and guarantees to the stockholders fair dividends; thus giving them a just compensation for their advances in building them. The great advantages, derived from them in the transportation of troops, supplies and munitions of war by our own government in the terrible conflict through which we have just passed, ought to

admonish us to deal liberally with the men whose genius planned, and whose enterprise and wealth constructed them.

Another effect, resulting from this statute, will be the rearing up in our midst of gigantic monopolies, which are always dangerous to the rights and liberties of the people. A few capitalists, by getting into their hands two-thirds of the first bonds of any company, may take possession of the road, receive and disburse its earnings at their pleasure, until the mortgage is foreclosed, and so on until, without extraordinary advances, they become the owners of all the railroads in your State.

By virtue of this statute, it is understood that the Kennebec and Portland Railroad, costing rising two and one-half millions of dollars, the capacity of which, it has been abundantly demonstrated, is sufficient to make fair returns to its original projectors, has passed into the hands of a few gentlemen, who took little interest in its construction; and it is said, we know not with how much truth, that this was brought about by improper combinations between the trustees of the bondholders and a majority of the directors of the corporation. At any rate, the foreclosure was instituted and perfected for the non-payment of about two years' interest on the second issue of the bonds, which only amounted to about \$30,000. It is said that no considerable advances were made by the gentlemen now claiming to own it. It came to them not by purchase but by legislation.

The broader the base, the stronger, safer and more enduring will be the structure. It is better for the State, and affords more ample security to the public, to have our railroads owned and managed, not by a few capitalists, as they soon will be, unless this statute is repealed, but by a large number of stockholders among the people. They will be less likely to use their power and wealth, if the enterprise is a success, to shape legislation and corrupt the channels of justice. These corporations, which have wielded so baneful an influence in other States, and even almost brought our national capital itself within their power, are managed and controlled, not by stockholders, but by a rich and powerful oligarchy. If at any time a railroad company becomes hopelessly insolvent and irresponsible, and it becomes necessary to wind up its affairs, application may be made to the Legislature for that purpose, and such action taken as the necessities of the case and public interests require; unless it is thought best, as in the State of New York, to

leave the regulation of such matters to the chancery powers of the Supreme Court, upon such terms as the Legislature may prescribe. This plan is highly commended by the railroad interests of that great State, for the reason, probably, that the court can so readily accommodate its action to the peculiar circumstances of each case after a careful investigation of the facts.

The only objection that has been urged with any degree of plausibility, is this, that certain interests have grown up under this statute which may be interfered with and put in jeopardy by its repeal. But this objection has little force, for the reason that all the mortgages, to foreclose which, measures have been instituted, were executed long before the passage of the statute in question, and its repeal will, at most, no more than place both parties in the position they were when they entered into the contract. We believe there are none, however, where it has been undertaken, that it is not claimed that the foreclosure has become absolute. But how does it put them in jeopardy? They are entitled to the possession of the road and all its earnings, until the last farthing of their debt is paid, and no human power can deprive them of it. What ought they to ask more?

We are of opinion, that, inasmuch as all the money used in the construction of our great lines of railways, was raised without the aid of this law, not only no harm, but much good will be done by its repeal. Stockholders are entitled to have the laws continued as favorable to them, as they were when they invested their money in stock. For these reasons we are in favor of the unconditional repeal of the statutes to which the order relates.

All of which is respectfully submitted,

REUBEN FOSTER.
CROSBY HINDS.