

MAINE STATE LEGISLATURE

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Sixty-Sixth Legislature.

HOUSE.

No. 121.

STATE OF MAINE.

STATE OF MAINE,
EXECUTIVE DEPARTMENT, }
February 15, 1893.

Gentlemen of the House of Representatives:

I have examined the act entitled "An Act to incorporate the Auburn and Mechanic Falls Railroad Company" and am constrained to withhold my approval, if for no other reason than to afford the legislature an opportunity to give the subject matter further consideration.

I have given to its various provisions a most careful consideration, for I observe that the charter members of the proposed organization are among the leading citizens of the State, interested in its progress and advancement. Some of its provisions do not afford sufficient security to the public, unduly invade private rights, and are against sound public policy.

Permit me to call your attention to some of the objections. The provision contained in section two, limiting the remedies of parties injured in their person and property, to the conditions and limitations in the general statutes applicable to towns, does not afford sufficient protection to the traveler upon a railway. Highways are maintained for the free use of the traveling public; railroads carry for hire and should not be relieved, in their occupation of the streets, from the ordinary obligations resting upon carriers of passengers.

Section nine provides that the "provisions of the thirty-first chapter of the Revised Statutes, relative to the foreclosure and redemption of mortgages, and the rights, duties and liabilities of bond-holders and trustees," shall be made applicable to the bonds and mortgage deed of trust of this corporation. It will be seen that the provisions of the thirty-first chapter of the Revised Statutes have no reference to the foreclosure and redemption of mortgages or the rights, duties and liabilities of bond-holders or trustees, but relate to dealings between the principal, factors and agents in *mercantile* transactions.

If this allusion to chapter thirty-one is a clerical error, and a reference was intended to chapter fifty-one of the Revised Statutes, which is applicable to railroads and to the foreclosure and redemption of mortgages thereon and the rights and liabilities of bond-holders and trustees thereunder, then it would seem to be intended to give such bond-holders and trustees the power, in case of default on the bonds, to organize as a railroad corporation, and still, under other provisions of the bill, they are exempt from the further obligations imposed upon railroads under chapter fifty-one.

Section ten of the proposed act, authorizes the corporation in carrying out its purposes to take and hold "*by virtue of*

the right of eminent domain, any real or personal estate or water power and privileges which it may find necessary and convenient."

While I have no doubt this power would be wisely exercised under the management of the promoters of this enterprise, the provision referred to is so broad and sweeping in its terms, that it might permit an unwarrantable exercise of the constitutional provision authorizing the taking of private property for public uses. The proposed legislation would unreasonably jeopardize the rights of private land owners and mill owners and the possessor of water power and privileges upon which industries may already depend.

Section thirteen seems to be somewhat contradictory of other provisions of the charter, uncertain in its operation, and involving legal propositions the judicial determination of which may injuriously affect the interests of the State and the people.

Under the provisions of section one, this corporation is authorized to "construct, equip, maintain and use a railroad with convenient single and double tracks, side tracks, switches, turn-outs and stations." The Board of Railroad Commissioners of the State, is constituted and the appellate tribunal to review the decisions of the municipal officers of any city or town, in respect to any matters arising under this act. The railroad commissioners constitute the board to determine the conditions on which this railroad shall cross any other railroad. While this corporation is given even greater powers than are ordinarily accorded to steam railroads, yet we find in section thirteen of the act, the declaration that "said railroad shall not be deemed to be a railroad within the meaning of that term as used in the railroad statutes and

Public Laws of this State.” While this section may not have great force in law, it practically declares that this railroad, with its extraordinary grants, *shall be a railroad* with all the rights and privileges which our laws guarantee, and still not be a railroad, but exempt from those provisions of law that provide for the safety and care of the travelling public upon the railroads of the State.

Or if the purpose be to declare this to be only an *association*, to enable the incorporators to run a street railroad as they might run a stage-coach or an omnibus for private advantage and free the corporation from the obligations of a railroad as common carriers, and its duties and obligations to the public as a railroad, then it seems to be unwise, if not unconstitutional, to grant to such organizations the exercise of the State’s right of eminent domain, expressly reserved by our Constitution, for public purposes.

The declaration, contained in section fourteen of the bill, that the object of the corporation cannot be attained under the general laws relating to the organization of railroad corporations, seems to invade the province of the judicial department of the State, and I apprehend would not be regarded as conclusive.

In view of the great interest manifested in legislation involving special charters, you will again allow me to call attention to the provisions of article four, part third of the Constitution of the State, directing that “The Legislature shall, from time to time, provide, as far as practicable, by general laws, for all matters usually appertaining to special or private legislation.” This provision in our Constitution embodies the deliberate expression of the people of Maine, and it will be observed that it is positive, direct and manda-

tory ; and the duty is enjoined upon us by this constitutional declaration to confine legislation of a private and special character to the narrowest limits consistent with the public weal.

The Constitution also provides that "Corporations shall be formed under general laws, and shall not be created by special acts of the legislature, except for municipal purposes and in cases where the objects of the corporation cannot otherwise be attained." If the legislature deems the objects of those desiring special charters and privileges practicable, and existing laws are not sufficiently comprehensive to permit the accomplishment of the purposes desired, it may provide the remedy by additional public laws, and thereby avoid the burdens of private and special legislation constantly increasing and pressing upon its attention.

In obedience to the constitutional provisions before referred to, a former legislature determined that it was practicable to provide by general law for the organization of railroad corporations. It is certainly desirable to provide by general laws for the organization of all railroad corporations desiring to construct, maintain and operate railroads for public use, except perhaps where they cross tide waters, the State having determined that it will retain within its control jurisdiction over all the tidal waters of the State, and that they shall be subject only to legislative action.

If it is practicable to permit the organization of steam railroads under the general laws, and to allow them to exercise the right of eminent domain, it would seem that it is also practicable to provide by general laws for the organization of electric or street railroads. If existing general laws are insufficient, and they are so deemed by many, if they are

defective, if they do not furnish sufficient security to the investors of capital desiring to aid in the development of these enterprises, we shall be conforming to the people's demand and expectation, embodied in their constitution, by making them sufficiently broad and liberal to meet all requirements. We are all desirous that nothing shall be done to hinder whatever may encourage enterprise and industry, and we should offer, by liberal enactments, every inducement that will aid in developing our broad acres, in building up our own industries and manufactures, and in making the people more prosperous.

Our supreme court has recently held, that the construction and operation of a street railway in the streets of our cities and towns, is not a new and different use of the land from its use as a highway. Laying down rails in the street and running street cars over them for the accommodation of the public may be a change in the mode of using the way, but not in the actual use; it is still used for a highway.

The legislature of the State, representing the public, if there be no constitutional inhibition, has the paramount power over all public ways, subject to property rights and easements of the abutting owner, and may delegate the authority of permitting the location, construction and operation of lines of street railway to the local authorities.

The history of these enterprises has clearly demonstrated the propriety of conferring upon the cities and towns the right to exercise some voice in a matter of so much consequence to them; and in more than ten of the states of our Union constitutional provisions have been adopted depriving the legislature of the power to grant the right to construct and operate street railways in any city, town or village, with-

out the consent of the local authorities. In many of the states of the Union, where no constitutional provision exists upon this subject, provision has been made by law investing the cities and towns with the right to permit the use of their streets for street railroad purposes and determine the conditions under which the privileges shall be enjoyed.

Some of these various constitutional and statute provisions provide that no law shall be passed by the legislature, granting the right to construct and operate a street railroad within any city, town or village, or upon any public highway, without first requiring the consent of such city, town or village having control of the streets or highways to be occupied by such street railway; and in many of the states it is provided that the franchise so granted shall not be transferred without similar assent first obtained.

The control and supervision of our public highways is vested in the local authorities. While it may be said they are held in trust by the State for the public, they are controlled by municipal instrumentalities. The land owners adjoining the same and the public are interested in having them maintained in a condition to meet the public demands. There is a growing sentiment that special franchises and privileges should not be granted to private incorporators, to unduly burden the public easement, now enjoyed by the people of the various cities and towns in their highways, without the consent of the municipality interested.

I believe it is safe and practicable to provide by general laws for the organization of street railways and avoid in the future the great time and expense that has been incurred in the past in considering and granting these special charters. It is a matter that is entirely within the province of the legis-

lature to determine. The executive is powerless to afford a remedy without the co-operation of the legislative department of the government.

It is not a pleasant obligation to with-hold my signature to an act that has received the unanimous approval of the co-ordinate department of the government, but a sense of duty compels me to return the same to the branch in which it originated, without my official approval.

HENRY B. CLEAVES.

STATE OF MAINE.

HOUSE OF REPRESENTATIVES, }
February 15, 1893. }

Tabled pending action by the House, by Mr. TWITCHELL of Bath,
and ordered printed.

W. S. COTTON, *Clerk.*