

MAINE STATE LEGISLATURE

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ACTS AND RESOLVES

PASSED BY THE

THIRTY-SIXTH LEGISLATURE

OF THE

STATE OF MAINE,

1857.

Published by the Secretary of State, agreeably to Resolves of June 23, 1820, February 26, 1840,
and March 16, 1842.

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PUBLIC LAWS

OF THE

STATE OF MAINE.

1857.

CHAP. 57.

commissioners of said county, to organize the same in the manner provided for in this act.

Same subject.

SECT. 12. The provisions of this act shall not be applied to any islands lying on the sea-coast of Maine.

SECT. 13. This act shall take effect on its approval by the governor.

[Approved April 15, 1857.]

Chapter 57.

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 :

Breach of conditions of mortgage.

SECT. 1. Whenever a railroad corporation shall have mortgaged its railroad and franchise, to secure the payment of any of its bonds or coupons, whether such mortgage was made directly to the holders of such obligations, or to trustees for their use, the refusal or neglect to pay any such bond or coupon within ninety days after a presentment, (subsequent to its pay day,) to the treasurer or president for payment, shall be deemed a breach of the condition of the mortgage.

—bond holders may direct trustees to take possession of the road.

SECT. 2. Upon the breach of such condition, it shall be the duty of the trustees to call a meeting of the holders or owners of bonds, secured by the deed creating said trust, any of whose bonds or coupons have been dishonored, by giving public notice of the time and place of such meeting, three weeks successively, in the newspaper published by the state printer, and in some newspaper published within the county in which the road extends, the last publication to be at least one week before the time of such meeting. The bond holders assembled at such meeting shall have the power to organize, by the choice of a moderator, and of a clerk, and to determine in regard to the expediency of the trustees entering into possession of such road for the purpose of running and managing the same on their behalf. At such meetings each holder of a bond secured by the mortgage, either in person or by proxy, shall have one vote for every hundred dollars of bonds held or represented. It shall be the duty of the trustees, (provided they shall be so instructed by the holders of the bonds secured by the mortgage,) and they are hereby authorized, when not inconsistent with any of the provisions of the deed creating the trust, or the legal rights of any other parties,

Bond holders entitled to one vote for every \$100. Trustees to take possession of road when directed by bond holders.

upon its being proved to them that the coupons or bonds secured in the mortgage to them, have been, and remain dishonored, without further process, or by action at law, to enter upon and take possession of such road, and of all the rolling stock and other property covered by the mortgage, and applying the net proceeds of the earnings thereof according to the legal rights of the parties in interest. And such trustees are hereby authorized, as fully as a board of directors of said road for the time being, to take charge of and manage said road, to appoint the requisite officers and agents, and to discharge the same; to fix the rate of fare and tolls subject to the restriction of the charter of said railroad company, and to demand and receive the same, and to do all things in the management of said road that a board of directors might lawfully do, with the right to prosecute and defend suits in their name as trustees, and to do all other things which the corporation itself might legitimately do. It shall be the duty of the trustees, after paying the running expenses, to apply sufficient of the earnings to keep the road, its buildings and equipment in repair, and to prevent any deterioration thereof, and to provide such new rolling stock as may be necessary, and then to apply the residue according to the legal rights of the parties having claims against such road. And said trustees shall not be personally liable, except for malfeasance or fraud; *provided, however,* that the funds in their hands, or in the hands of their treasurer, (who shall be required to give bonds for the performance of his duties,) shall be subject, after payment of prior running expenses and personal liabilities, assumed by any of the trustees, on account of operating said road, to the payment of such damages as shall arise from any misfeasance in the management of said road. And when all dishonored bonds and coupons, secured by the deed in which the trust is created, shall have been paid, said trustees shall surrender said road and other property to the parties who by law are entitled to receive the same. It shall be the duty of said trustees to cause a fair and exact account to be kept of the receipts from said road, and expenses and disbursements in the management of the same, and to exhibit the same to any officer of the corporation, or other person interested, whenever requested so to do. While managing any railroad as provided in this section, they shall, once in each year, and at other times when requested so to do, in writing, by the holders of one-fifth of the bonds in amount secured by the mortgage, call a meeting of the holders of said bonds, by giving such notice as is prescribed in the by-laws of the corporation for calling meetings of the stockholders thereof, and report to them the state of the property, the expenses of the management thereof, and the appli-

—authority and powers of.

Earnings of road, how applied.

Trustees not liable, except in certain cases.

Road, &c., when to be surrendered.

Account of receipts and disbursements to be kept.

Bond holders, meeting of, how called, &c.

CHAP. 57.

—may instruct trustees, &c.

—may prescribe compensation of trustees.

—may vote by proxy.

—contract for management of road.

Foreclosure of mortgage, notice of, &c.

Right of redemption to cease in three years.

Foreclosure, how prevented.

cation of the earnings made by them. At such meetings the bond holders may vote such instructions to the trustees as they may deem advisable, and if not inconsistent with the duties prescribed in the deed of trust, or contrary to law, said trustees shall conform to such instructions in the execution of the trust. At such meetings they may act on such questions as shall be specified in the call of the meeting. They may also prescribe the compensation of the trustees. At all such meetings the bond holders may act and vote, either in person or by proxy, and each one hundred dollars of the bonds shall be entitled to one vote. On being instructed so to do, by the holders of the bonds secured by the mortgage, at any meeting held or called, as aforesaid, the trustees may, and it shall be their duty to, contract with the directors of the corporation, or with any other competent party, to take charge of, manage and operate said road, so long as the trustees may rightfully retain possession thereof, and to pay over to the trustees the net earnings of said road, for the benefit of the bond holders.

SECT. 3. In order to obtain a foreclosure of the mortgage, the holders of any such dishonored bonds or coupons, may apply to the trustees under the deed securing the same, to have such mortgage foreclosed; and it shall be the duty of such trustees upon application of bond holders, to an amount equal to one-third of the amount of such mortgage, immediately to give public notice three weeks successively, in the newspaper published by the state printer, and in a newspaper published in each of the counties into which said road extends, if any shall be published therein, stating the date and conditions of the mortgage, and the claim of the applicants under it, and that the conditions thereof has been broken, by reason whereof they claim a foreclosure; and they shall cause a copy of such printed notice, and the name and date of each of said newspapers containing it, to be recorded in each of such counties, in its registry of deeds, within sixty days from the time of the first publication. And unless, within three years from the time of such first publication, the property shall be redeemed by the mortgagors or persons claiming under them, the right of redeeming shall be forever foreclosed, unless some bill in equity to redeem founded on payment or on an adequate and sufficient tender of the amount of the over-due bonds and coupons secured by said mortgage, had then previously been commenced.

SECT. 4. Upon the completion of such recordings, the procedure for foreclosure shall enure to the benefit of all the holders of any such bonds or coupons, which, at the time of such completion, had been dishonored as above described; and it is only upon the pay-

ment or tender of payment of all such bonds and coupons, that the foreclosure shall be prevented, provided that tender may be made to the trustees at any time after the notice, and before the foreclosure shall become absolute; and it shall be the duty of the holder of such dishonored bond or coupon, to present them to said trustees thirty days before the time of redemption shall expire, and such mortgage shall not be foreclosed by reason of the non-payment of any not so presented. Any person claiming under the mortgagors shall have free access to the books of the corporation to ascertain the amount of the over due bonds and coupons remaining unpaid.

Claimants to have free access to books of corporation.

SECT. 5. If the foreclosure of the mortgage be effectuated, it shall enure to the benefit of all the holders of bonds and coupons provided for in its condition. And they, their assigns and successors, are hereby constituted a company, incorporated and chartered as of the day of the foreclosure, for all the purposes of the original company, with all the chartered and legal rights and immunities, which pertained to the original company at the time of the foreclosure; and it shall be the duty of trustees, by suitable deed of release, to convey to such new company all the rights and interest by them held in said railroad, appurtenances and franchise, and other property, by virtue of their deed of trust and the foreclosure thereof, and if they neglect or refuse so to do, the court, upon application in equity, shall have power to compel them so to do, and upon such conveyance the said trustees shall be discharged of their trust.

Foreclosure to enure to benefit of certain bond holders.

Bond holders to constitute railroad corporation, &c.

Trustees to transfer all property, &c., to new company.

SECT. 6. This new corporation, though a distinct one, may, for the calling of its first meeting, retain the same name with the old one; but shall at that meeting adopt a new corporate name, such as it shall choose to take, by which name it shall always afterwards be known. Its first meeting may be called in the same manner as was authorized for calling the first meeting of the original company. And the new corporation shall have full right to take and retain the possession and use of the mortgaged property, notwithstanding the pendency of any bill in equity to redeem.

Name of corporation.

First meeting, how called, &c.

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

Bill in equity to redeem, proceedings in case of.

CHAP. 58.

Original corporation to continue in existence for certain purposes. Foreclosure not to impair rights of recovery against corporation.

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

Rights of parties claiming under prior mortgage not impaired by this act.

Rights of new company to redeem prior mortgage.

SECT. 9. Proceedings under this act for the foreclosure of a subsequent mortgage shall not impair the rights of any party claiming under a prior mortgage. The new corporation resulting from the foreclosure of a subsequent mortgage, shall have all the rights of redeeming against a prior mortgage, and to the same extent, by bill in equity or otherwise, which the holders of the bonds and coupons secured by such subsequent mortgage, or their mortgage-trustees for them, could have had.

S. J. court to have jurisdiction over all matters arising under this act.

SECT. 10. Without impairing the rights of parties who shall see fit to enforce them at law, the supreme judicial court, as a court of equity, shall have jurisdiction of all matters arising under the provisions of this bill, to be presented and acted upon as other questions arising in equity in this state.

SECT. 11. This act shall take effect and be in force from and after its approval by the governor.

[Approved April 15, 1857.]

Chapter 58.

An act to exempt stockholders in corporations from personal liability.

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

Personal liability of stockholders of corporations.

The stockholders of all corporations created by the legislature after the sixteenth day of February, in the year of our Lord one thousand eight hundred and thirty-six, except banking corporations, when the stock of the stockholder claiming this exemption shall have been paid into the full amount thereof, and no part of the principal shall have been withdrawn, shall not be personally liable for the debts of the corporation contracted after the first day of June, in the year of our Lord one thousand eight hundred and fifty-seven;