

MAINE STATE LEGISLATURE

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ACTS AND RESOLVES

PASSED BY THE

FORTY-THIRD LEGISLATURE

OF THE

STATE OF MAINE.

1864.

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1864.

PUBLIC LAWS

OF THE

STATE OF MAINE.

1864.

of residence of every such officer, the date of his commission, and the county or counties for which he is commissioned. And he shall forward to said clerks on the first day of December and of June annually thereafter, a similar list of all such officers commissioned and qualified during each preceding period of six months.

SECT. 2. The clerk of courts in each county shall record all such lists in a book to be by him kept for that purpose; and such record, and also copies thereof duly attested by him, shall be deemed legal, but not conclusive evidence of the due appointment and qualification of all such officers.

Clerks of courts shall record lists.

—record, &c., shall be deemed legal.

Approved March 24, 1864.

Chapter 265.

An act relating to the redemption of railroad mortgages by subsequent mortgagees, and for the better protection of bondholders.

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

SECT. 1. In all cases where any entry has been made or other steps have been, or shall hereafter be taken with a view to foreclose, or commence the foreclosure of any mortgage upon any railroad within this state, or upon any part thereof, or upon its franchise or other property, any subsequent mortgagees of the same road, franchise or other property, holding in trust for the benefit of any holders of the bonds or other claims secured by such subsequent mortgage, in which no provision for a sale is expressed, may pay the amount due upon the mortgage so being in process of foreclosure, at any time before such foreclosure shall become absolute; and upon payment or tender thereof shall hold the same in trust for the persons holding bonds or other claims secured by such subsequent mortgage, who severally shall have contributed to the payment and redemption thereof; and each bondholder or other person so contributing, shall be equitably interested therein, in proportion to the amount he shall have paid; and the trustees of the subsequent mortgage shall hold the same as assignees notwithstanding its payment in trust for the benefit of the persons contributing as aforesaid, in the same manner and with the same effect that it would have been held by the preceding mortgagees if it had not been paid or redeemed, subject, however, to the provisions for further contribution hereinafter contained; *provided however*, that whenever any subsequent mortgage upon any railroad, contains a provision for a sale of the mortgaged property, if it appears by the terms of said mortgage that the right to make such

Mortgages by subsequent mortgagees, proceedings where sentence is made, &c., in view to foreclosure.

—may pay amount due on mortgage.

—when payment or tender shall hold same interest for bondholders, &c.

Trustees of subsequent mortgage shall hold same as assignees.

Proviso.

CHAP. 265.

sale is conditional, and that the sale is to be made upon the written application of persons owning a majority, in amount, of the bonds or other claims, if any, secured thereby, and no such written application shall be made to the trustees under such mortgage for a sale, the bondholders or other persons so secured, shall be entitled to all the rights and privileges which are provided for other bondholders and persons in and by this act.

—may call meeting of bondholders.

—notice, how given.

—how may be called.

—how organized.

—if majority of interest shall vote to pay or redeem, each may contribute to the payment, &c.

If voted expedient to pay or redeem.

—trustees to give notice to bondholders, &c.

—stating time and place and person to whom

SECT. 2. For the purpose of paying any such preceding mortgage, the trustees under any subsequent mortgage may with or without application as hereinafter provided, call a meeting of the bondholders or other persons secured thereby, to be held at such time and place as they or a majority of them shall appoint, of which they shall give at least fourteen days notice in the state paper and such other newspapers as they may deem proper, therein stating the object of said meeting; and it shall be their duty to call such meeting upon the written application of any one or more of the persons interested in the subsequent mortgage as aforesaid, (upon the payment of all reasonable expenses to be incurred thereby,) provided the said application shall be made at least six months before the preceding mortgage will be absolutely foreclosed. The persons interested as aforesaid, present at such meeting, may organize the same by the choice of a moderator and clerk, and may proceed to determine what measures, if any, shall be taken for the payment or redemption of the preceding mortgage; and if persons holding a majority of the interest there represented, shall vote that it is expedient to pay or redeem the preceding mortgage, it shall be the privilege of each and every bondholder, or other person holding claims secured by such subsequent mortgage, to contribute his proportion to the payment thereof, and if any such bondholder or other person shall, after due notice to be given as hereinafter stated, fail to pay his proportion according to the provisions of this act, his rights shall be forever foreclosed and barred.

SECT. 3. Whenever, at any meeting held in pursuance of the provisions of this act, it shall have been voted that it is expedient to pay or redeem any prior mortgage as aforesaid, the trustees under the subsequent mortgage, shall, immediately after being notified of the passage of such vote, give public notice thereof, which notice shall be published at least three weeks successively in the state paper, and such other newspapers as the trustees may think proper, if the time before the day of foreclosure will reasonably permit, and shall therein call upon all bondholders and other persons holding claims secured by such subsequent mortgage to pay their several proportions of the sum to be paid for the redemption of the prior mortgage; and shall therein state the time and place, and person to whom their several proportions shall be paid, to-

gether with the rate per cent. which each hundred dollars of the bonds or claims secured will be obliged to pay as near as conveniently may be. And if any person so interested shall fail to pay his proportion by the time fixed in said notice, then any such deficiency arising from such failure may be paid by any other person or persons holding bonds or claims secured as aforesaid; and the persons so paying any deficiency as aforesaid, shall succeed to all the rights which the person failing to pay as aforesaid would have had, if seasonable payment had been made by him, subject however, to the further right of redemption as hereinafter provided.

SECT. 4. If no such meeting shall be seasonably called by the trustees of such subsequent mortgage as is provided for in this act, or if at such meeting duly called the bondholders or other persons holding claims secured by such mortgage, shall fail to vote that it is expedient to pay or redeem the prior mortgage, it shall be lawful and competent for any one or more of the bondholders or other persons so secured by such subsequent mortgage, to pay over to the trustees holding such mortgage, so much money as shall be necessary to redeem the said prior mortgage; and it shall be the duty of such trustees upon seasonable payment to them as aforesaid, to pay or redeem such prior mortgage therewith; and upon the redemption thereof, the persons so paying the money, shall stand in the same position and be vested with all the equitable rights which the other bondholders or other persons secured by such subsequent mortgage would have been entitled to if they had paid in due season their proportions thereof; and the trustees of the subsequent mortgage shall hold the real and personal property so redeemed in trust for the benefit of the persons paying or furnishing the redemption money as aforesaid, subject, however, to the same provision for further right of redemption which is provided in the following section for persons failing to pay their proportions after notice as is therein required.

SECT. 5. Whenever any prior mortgage shall have been paid or redeemed in pursuance of this act, and it shall appear to the trustees making such payment that any of the bondholders or other persons holding claims secured by the subsequent mortgage, which they represent have failed to pay their proportion of the sum paid to redeem the prior mortgage, it shall be the duty of such trustees to give public notice that all persons who have failed to pay their proportion as aforesaid, may redeem their several proportions by payment to said trustees or their agent of the sum so paid or advanced in their behalf, with interest at the rate of twelve per cent. per annum thereon, at any time within one year from and after the first publication of said notice; and any payment so made to the trustees or their agent within the time aforesaid, shall

CHAP. 265.

proportions shall be paid.
—any person failing to pay, &c.

—person paying shall succeed to all rights, &c.

If voted not expedient to pay or redeem.

—bondholders, &c., may pay trustees to redeem prior mortgage.

—upon redemption, persons paying shall be vested with rights, &c.

—trustees shall hold property redeemed for persons furnishing redemption money.

Bondholders failing to pay their proportion to redeem.

—trustees shall give notice.

—if payment is made, rights restored.

CHAP. 265. have the effect to restore the persons so paying to the same position and interest in the property embraced in the prior mortgage, which they would severally have been entitled to, if they had paid their proportion thereof, at any time before there would have been an absolute foreclosure of the prior mortgage, if the same had not been paid or redeemed; and if no such payment shall have been made within the year aforesaid, the rights of all persons so failing to pay their proportion, with interest as aforesaid, in and to the property conveyed by the prior mortgage, shall be forever barred.

—if payment is not made, rights barred.

Money paid to trustees shall be distributed pro rata. Notice, how given.

All moneys paid to said trustees in pursuance of this section, shall be distributed pro rata among the several persons who paid or advanced the same. The notice aforesaid shall be published for at least ten weeks in succession in the state paper, and the first publication thereof shall not be until after the prior mortgage would have become foreclosed, if it had not been paid or redeemed.

SECT. 6. All persons who have contributed or shall hereafter contribute to the payment of any prior mortgage in pursuance of the provisions of this act, shall have the right to organize and form a new corporation with such name as they may designate, to be certified by the president and secretary of such new corporation to the secretary of state; and shall have and enjoy all the rights and privileges which are provided by law, or which would attach to the bondholders or other persons holding claims secured by such prior mortgage, if the same had been foreclosed without any payment or redemption thereof; *provided however*, that the said rights and privileges, and also the chartered rights and immunities conferred upon the holders of bonds secured by a mortgage of a railroad and its franchise, upon a foreclosure thereof, under the provisions of chapter fifty-one of the revised statutes, shall be liable at any time to be amended, altered or repealed, at the pleasure of the legislature.

Certain persons may organize a new corporation, &c.

Rights, privileges, &c.

Proviso.

SECT. 7. When the foreclosure of a railroad mortgage shall have been completed and a new corporation formed, the president and treasurer of the new corporation shall issue certificates of stock therein to each holder of bonds or coupons, or other claims secured by the mortgage foreclosed, to the extent of one share for every hundred dollars so secured, so held at the time of foreclosure; and the treasurer shall issue certificates for the fractions, payable to the bearer in stock of the new corporation, when presented in sums sufficient to make one or more shares; and when such certificates shall be presented in sufficient sums to entitle the holder to one or more shares, the president and treasurer shall issue certificates of stock for the same accordingly.

When new corporation is formed.

—may issue certificates of stock.

—treasurer shall issue certificates for fractions, &c.

SECT. 8. The holders of the bonds or other claims under any such mortgage as is described in the first section of this act, put

Bondholders may by vote instruct

on foreclosure, in any meeting called for that purpose, may by vote instruct the trustees to extend the time for the redemption of such mortgage; and thereupon the trustees of such mortgage shall be authorized and required by writing under their hands, given to the party entitled to redeem, to extend the time of the redemption, and the same shall be extended accordingly.

trustees to extend time of redemption of mortgages.

SECT. 9. In all cases where bondholders or other persons secured by such subsequent mortgage shall avail themselves of the provisions of this act, the stockholders of the company or any number of them desiring to do so, may have the privilege of redeeming the property described in such prior mortgage, at any time within two years after such redemption on payment of such prior mortgage, to the trustees of such subsequent mortgage, with ten per cent. interest thereon until paid, together with the amount which shall be due to such redeeming bondholders or other claimants on bonds or other claims held by them, secured by such subsequent mortgage with interest thereon; and thereupon such paying stockholders shall succeed to, and have all the rights and title, legal and equitable, to such mortgaged property as said bondholders or other claimants succeeded to, and were possessed of, under or by operation of their said redemption and of which they were possessed under such subsequent mortgage. And in case the earnings of such road if taken possession of, and managed by the trustees of such subsequent mortgage shall exceed the cost of the running expenses and necessary repairs and proper expenditures for the improvement and management of the road, such excess shall be deducted from the amount to be paid by the stockholders aforesaid, and shall be allowed by the trustees of such subsequent mortgage to the said stockholders, as so much payment towards the redemption of said mortgages. And if the earnings of said road shall prove insufficient to pay the cost of necessary repairs and prudential management of said road, such deficiency shall become an additional charge upon the road and shall be paid to the trustees as a part of the sum to be paid by the stockholders for the redemption thereof. And for the purpose of making such redemption by stockholders, they shall have the same privilege of demanding and receiving from said trustees a true and correct account of the sums to be paid said trustees for the benefit of said stockholders and other claimants with the interest due thereon; and shall have the same remedies on failure thereof, as are provided in case of mortgages of real estate. And in case of any dispute in relation to any matters involved in the proceedings of any person or party under the provisions of this act, it shall be competent for the supreme judicial court, on petition of said trustees or any party interested as bondholder, stockholder, or other claimant aforesaid,

When bondholders, &c., secured by subsequent mortgage shall avail themselves of this act.

—stockholders may redeem.
—within two years.

—shall succeed to all rights, &c.

Excess of earnings, how disposed of.

—if insufficient, shall be an additional charge upon the road, &c.

Stockholders, right to demand a true account of sums paid trustees.

—remedies in failure thereof.

In case of dispute, S. J. C. authorized on petition to adjudicate, &c.

CHAP. 266.

Act shall not
be construed to
repeal or
supercede
rights, &c.

Stockholders
redeeming to
give notice to
stockholders
not redeeming.

—rights of
notified
stockholders.

and upon a hearing had thereon, to adjudicate such dispute and make such decrees therein as the said court may deem reasonable and just. But nothing in this act shall be construed to repeal or supersede any rights or remedies which any such stockholder, bondholder or other claimant now has or may enforce at law or in equity, relating to the subject matters of this act. And it shall be the duty of any stockholders, so redeeming, to give the same notices to all stockholders who have not contributed towards such redemption, as are provided in this act in the case of bondholders; and such notified stockholders, shall, respectively, have the same right and privilege of contributing to such redemption in proportion to their stock, as is provided in this act for bondholders or other claimants who have failed to pay their proper proportions before redemption to the trustees who first redeemed.

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

Approved March 25, 1864.

Chapter 266.

An act to change the time of holding the August term of the supreme judicial court for criminal business, within the county of Penobscot.

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

S. J. C. Penob-
scot county,
criminal term
of, changed.

SECT. 1. The term of the supreme judicial court which is now holden for criminal business in the county of Penobscot on the first Tuesday of August, shall hereafter be held on the Second Tuesday of said month annually.

Matters pend-
ing, when to
have day.

SECT. 2. All appeals, processes, recognizances or other matters which have been or may be taken for, or made returnable to said court, upon the first Tuesday of August in the year of our Lord one thousand eight hundred and sixty-four, and all matters pending and having day in said court under the former regulations of the August term thereof, shall be returned and entered and shall have day at, and in said court on the second Tuesday of August in the year of our Lord one thousand eight hundred and sixty-four; and no person shall be relieved of any liability, or discharged from any obligation as principal, or surety, on account of this change.

SECT. 3. This act shall take effect when approved.

Approved March 25, 1864.