

MAINE STATE LEGISLATURE

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ACTS AND RESOLVES

OF THE

FORTY-SEVENTH LEGISLATURE

OF THE

STATE OF MAINE.

1868.

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PRIVATE AND SPECIAL LAWS

OF THE

STATE OF MAINE.

1868.

Chapter 572.**CHAP. 572.**

An act to authorize the city of Bangor to loan its credit to aid in the construction of the European and North American Railway.

WHEREAS, Two acts have heretofore been passed and are now in force, each authorizing the city of Bangor to loan its credit to the amount of five hundred thousand dollars to the European and North American Railway Company, in aid of the construction of their railroad; now, for the purpose of consolidating said loans, rendering but one mortgage necessary for the security of said city and for other purposes,

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

SECT. 1. The city of Bangor is hereby authorized to loan its credit to the European and North American Railway Company in aid of the construction of their railroad, not exceeding, however, one million dollars, upon their compliance with the following terms and conditions:

SECT. 2. If this act shall be accepted, as hereinafter provided, and said company shall, within one year from its approval, finish and complete their line of railway from the depot of the Maine Central Railroad, in the city of Bangor, to Milford village, to the approval of the mayor and alderman for the time being of the said city, as a first class railroad, and shall have acquired the right of way according to law, by payment of awards and other land damages, or by a deposit of the amount thereof with the clerk of the courts, as by law required, then such fact shall be certified by said mayor and aldermen to the treasurer of said city, and he shall forthwith issue to the directors of said company, for the purpose of building and completing said road to Winn, the scrip of said city to the amount of one hundred and fifty thousand dollars; and on the completion of said road in the direction of Winn to a point ten miles above Milford village, and payment of damages or deposit thereof by said company, as aforesaid, and approval by the mayor and aldermen of said city for the time being, they shall certify that fact to the city treasurer, who shall forthwith issue to the directors of said company an additional sum of one hundred thousand dollars of the scrip of said city, for the purposes aforesaid; and on the completion of said road to Passadumkeag stream, and payment of damages, or deposit thereof by said company, as aforesaid, and approval by the mayor and aldermen of said city for the time being, they shall certify that fact to the city treasurer, who shall forthwith issue to the directors of said company an additional sum of one hundred thousand dollars of the scrip of said city for the purposes aforesaid; and on the completion of said road to Lincoln village, and payment of damages or deposit thereof

Preamble.
Amount of loan.

Upon completion of road to Milford, payment of awards, &c., or deposits for same, city treasurer to be notified, who shall issue for completion of road to Winn city scrip to amount of \$150,000.

When completed ten miles above Milford under same conditions, further issue of scrip to amount of \$100,000 to be made.

On completion to Passadumkeag stream under like conditions, \$100,000 to be issued.

On completion to Lincoln,

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further amount of \$350,000 in city scrip to be issued.

Final issue of \$300,000 to be made when completed to Tannery village.

Scrip, how signed, issued and when and where payable.

Limit of scrip, how certified and secured.

Railroad to issue bond to city in double amount of scrip of city.

Conditions of same.

Company further required to issue its scrip to city in equal amount of city scrip.

by said company, as aforesaid, and approval by the mayor and aldermen of said city for the time being, they shall certify that fact to the city treasurer, who shall forthwith issue to the directors of said company an additional sum of three hundred and fifty thousand dollars of the scrip of said city for the purposes aforesaid; and on the completion of said railway to the Tannery village, or to a point near to the same in the town of Winn, opposite to the Five Islands in Penobscot river, and payment of land damages or deposit thereof, as aforesaid, by said company, within two years from the approval of this act, to the approval of the mayor and aldermen of said city for the time being, they shall certify that fact to the city treasurer, who shall forthwith issue to the directors of said company an additional sum of three hundred thousand dollars of the scrip of said city.

All of said scrip shall be signed by the city treasurer and countersigned by the mayor for the time being; be issued in sums not less than one hundred dollars nor more than five thousand dollars each, with coupons for interest attached, payable semi-annually, payable to the holder thereof in Bangor, Boston or New York, the principal payable in twenty-five years from the date of the first issue of scrip under this act; *provided* the whole amount of scrip issued under this act shall not exceed the sum of one million dollars; and each issue of said scrip shall bear date of the certificate of the mayor and aldermen to the city treasurer, on the receipt of which he is authorized to issue the same, and all shall be secured by the bond and mortgage hereinafter mentioned, which shall be executed and delivered to the city treasurer on the first issue of said scrip.

SECT. 3. Concurrent with the first issue and delivery of said scrip as aforesaid, the president and directors of said company, in their official capacity, shall execute and deliver, or cause to be executed and delivered, to the said treasurer the bond of said company, the penal sum in said bond to be double the amount of scrip authorized to be issued by this act; said bond shall be made payable to said city, and shall be conditioned that said company will duly pay the interest on such scrip of said city as shall be issued under and by virtue of this act, and also the principal thereof, according to the tenor of the scrip, and in all respects will hold and save harmless the said city on account of the issue of the same; the said president and directors of said company shall also, in case of the issuing of the scrip of said city as provided in section two of this act, and simultaneously therewith, make, execute and deliver, or cause to be made, executed and delivered to the said city treasurer, the scrip of said company, payable to the holder thereof, at the same time and for the same amount as the scrip then issued by said treasurer to said company, with like coupons for the interest attached, which said scrip shall be held by said

city as collateral security for the fulfilment of the conditions of the said bond; and in default of any one of said conditions, said city may from time to time sell said scrip, or any portion thereof, by public auction or auctions, in the cities of Bangor, Boston or New York, or either of them, after sixty days notice, in writing, to the president or one of the directors, or any three of the stockholders of said company, naming therein the time and place of sale. The net proceeds of all such sales shall be endorsed on said bond.

SECT. 4. The president and directors of said company are hereby authorized, and it shall be their duty, in their official capacity, upon the receipt of the first issue of said city scrip, and upon the delivery of their bond to said city to secure the payment of the same, to execute and deliver, or cause to be executed and delivered, to the city treasurer, a mortgage of their railroad, from its terminus in Bangor to said Tannery village, or near thereto in the town of Winn, to and including a depot and turn-table there, and all the land and personal property held and used by said company for the construction and working of said road between said two points, with all the fixtures, appendages and appurtenances thereof, and the whole franchise of said company to the line of the state, without prior incumbrance, also all the rolling stock which shall be owned by said company on said road through its entire extent from Bangor to the east line of the state; *provided however*, if said road shall be built by said company from said town of Winn to the east line of the state, and furnished and equipped with sufficient rolling stock for operating the same, and the city of Bangor shall take possession of the mortgaged portion of said road under any provisions of this act. Then one-third of all the rolling stock of said company shall be released by said mortgagees and set out on demand of said company by the railroad commissioners for time being, who shall also determine upon the sufficiency of said stock as aforesaid. Said mortgage shall be executed according to the laws of this state, and shall be in due and legal form, and contain apt and sufficient terms to secure the said city the fulfilment of all the conditions in said bond contained. Said bond and mortgage shall be recorded in the registry of deeds of the county of Penobscot, which shall be sufficient to protect the rights of said city, and no other recording shall be required.

SECT. 5. For the purpose of foreclosing said mortgage for conditions broken, it shall be sufficient for the said mayor and aldermen to give notice according to the mode prescribed in the revised statutes for the foreclosure of mortgages, by publication of notice thereof, which may be published in a newspaper printed in Bangor, and a record thereof may be made within thirty days after the date of the last publication in the registry of deeds for the county of Penobscot, which publication and record shall be sufficient for the

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Same to be held as collateral security and sold by city in default of conditions.

Company upon receipt of first issue of city scrip to execute and deliver to city treasurer mortgage of road, corporate property and franchise.

Proviso as to release in case of foreclosure of portion of rolling stock if said road is completed to Winn.

Form of mortgage and record of same.

Proceedings in effecting foreclosure.

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Rights of company under charter there-after vested in city as a corporation.

Non-payment of interest or principal, or non-fulfilment of bond by directors, city authorized to take possession of road, &c.

Reservation as to portions of road not covered by mortgage.

Possession, how taken.

purpose of such foreclosure. Upon the expiration of three years from and after such publication, if the condition of said mortgage shall not within that time have been fulfilled, the foreclosure shall be complete, and shall make the title to said franchise, and to all the property covered by said mortgage, absolute in said city. And said city, its successors and assigns, shall thereupon be constituted a company incorporated and chartered as of the day of the completion of the foreclosure, and shall have and possess all legal rights, powers and immunities which pertained to said original company at the time of said foreclosure, except so far as the exercise and enjoyment of the same may be necessary to the corporation for the convenient and profitable management and control of that part of said road not included in the mortgage to the city, which excepted rights, powers and immunities shall be retained by the said company or its assigns.

SECT. 6. If the directors of said company shall at any time neglect or omit to pay the interest which may become due upon any portion of the scrip issued and delivered under the provisions of this act, or to pay the principal as it shall become due, or to comply with any of the conditions of said bond, the city of Bangor may take actual possession in the manner hereinafter provided of said franchise and of that part of said railroad, and of all the property real and personal of the company which is covered by said mortgage, and may exercise all the rights, privileges and powers conferred on said company by its franchise, so far as the exercise and enjoyment of the same may be necessary to the convenient and profitable management and control of that part of said road mortgaged to the city, not interfering, however, with the exercise and enjoyment by said company or its assigns of the like rights, privileges and powers under said franchise in the working and management of that part of the road not mortgaged to said city, and may hold the same and apply the income thereof to make up and supply such deficiency and all further deficiencies that may occur while the same are so held, until such deficiencies are fully made up and discharged. A written notice, signed by the mayor and a majority of the aldermen of said city, and served upon the president or treasurer, or any director of the company, or if there are none such, upon any stockholder of the company, stating that the city thereby takes actual possession of said franchise and of that part of the line of the railroad, and of all the property of said company, real and personal, which is covered by said mortgage, shall be a sufficient actual possession thereof, and shall be a legal transfer of all the same, for the purposes aforesaid, to the city, and shall enable said city to hold the same, including all the fuel, oil and tools of said company covered by said mortgage, and all of said rolling stock, against any other claims thereon until

such purposes have been fully accomplished; *provided however*, if said company shall furnish and equip the whole line of said road, as provided in section four of this act, said city shall, after having taken possession of said rolling stock, set out one-third part of the same to said company on demand, as provided in said section four.

Proviso as to portion of rolling stock.

SECT. 7. Said city having taken possession of said mortgaged property in the manner and for the purposes provided in section six, shall have authority and power as fully as a board of directors of said company, 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 restrictions of the charter of said company, and to demand and receive the same, with the right to prosecute and defend suits in the name of said company, and to do all things which said company itself or the directors of said company might or could do; and after paying the running expenses, may apply sufficient of the earnings of said road to keep it, its buildings and equipments, in repair, and to prevent any deterioration thereof, and to provide for such new rolling stock as may be necessary, and then shall apply the residue of said earnings to the payment of the interest coupons and scrip aforesaid; and whenever said interest and all dishonored coupons, scrip or bonds secured by said mortgage shall have been paid, said city shall relinquish the control of said road and deliver any property of said company in its possession to said company or its assigns; *provided however*, said city, or its officers or agents, while operating said road, under the provisions of this section, shall not be liable except for malfeasance or fraud, and shall have the right to apply any proceeds received from the earnings of said road, to pay any damages that may or shall arise in the operating and managing of said road, for which said city shall be liable in law to third parties; *and provided further*, in case any difficulty shall arise while said city is in possession of the mortgaged part of said road, with the company or its assigns who may be operating that part of the road not included in said mortgage to said city, as to times of running trains, as to making connections or the proper rate of dividing the through fare, or of running cars of one party over that section of the road operated by the other, then such difficulty shall be referred to and settled by the railroad commissioners for the time being, upon whom is hereby conferred the same powers in relation to the said two sections of this road, which they would have, by law, if each of these two sections belonged to independent corporations.

Powers of city in management of road and disposition of earnings.

When obligations of company to city are discharged possession of road shall be relinquished.

Proviso as to liability of city, &c., and right to apply earnings in payment of damages.

Difficulties arising between city and company affecting portion of road not mortgaged, to be referred to railroad commissioners.

SECT. 8. For the purposes of effecting the objects prescribed in the two preceding sections, the mayor and aldermen may cause a suit in equity to be instituted, in the name of the city of Bangor,

Suits.

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Injunctions.

Powers of S. J. court in relation to same.

Powers of directors of company suspended in certain matters during possession by city.

Directors, how appointed, &c.

Authority and compensation of same.

Liabilities incurred or assumed by city to create a lien on road, &c.

Priority of lien.

in the supreme judicial court in the county of Penobscot, against said company, directors, or any other person, as may be necessary for the purpose of discovery, injunction, account or other relief under the provisions of this act, and any judge of the court may issue a writ of injunction, or any other suitable process, on any such bill, in vacation or in term time, or with or without notice, and the court shall have jurisdiction of the subject matter of such bill, and shall have such proceedings and make such orders and decrees as may be within the power and according to the course of proceedings of courts of equity, as the necessities of the case may require.

SECT. 9. After said city shall have taken possession of the mortgaged property and said franchise under and in accordance with the provisions of section six, and while it shall be in the exercise of the power conferred upon it by the provisions of section seven, the exercise by the directors of the powers conferred upon them by the charter or by-laws, shall be suspended so far as this, that any act of theirs that shall hinder, obstruct or impede said city in the exercise of any of the powers conferred upon it by the provisions of sections six and seven, shall, so far as said acts may hinder, obstruct or impede, be void and of no effect, and the said city shall have the same right to exercise such powers as if no board of directors existed.

SECT. 10. Three-fourths of the directors of said company shall be resident citizens of said city, and three of this number shall be appointed by the city council, and shall be chosen annually by the city council in joint ballot, before the annual meeting of said company for the choice of their officers, who shall have the same authority in transacting the business of said company, and who shall be entitled to like compensation from the company as any other directors, but the right to choose such directors shall cease when the loan contemplated is extinguished.

SECT. 11. As an additional or cumulative protection for said city, all liabilities which by said city may be assumed or incurred under or by virtue of any of the provisions of this act, shall at the time, and by force thereof, and for the security and payment of the same, create in favor of said city a lien on the entire franchise of said company, and on all their railroad from its terminus in Bangor to and including their said depot and turn-table in the town of Winn, and all the land held and used by said company for the construction and working of said road between said two points, with all its appendages and appurtenances thereof and all the personal property of said company, including all the fuel, oil, tools, and rolling stock of said company, between said two points, which lien shall have preference and be prior to all other liens and incumbrances on all of said road between said two points, and said franchise and all the aforesaid personal property of said company;

and said lien shall be enforced, and all the rights and interests of said city shall be protected when necessary by suitable and proper judgments, injunctions or decrees of the supreme judicial court, on a bill or bills in equity, which power is hereby specially conferred on said court; and it is hereby provided, that the said lien provided for in this section shall not be deemed waived or ineffectual by the acceptance of said city of any mortgage or other security contemplated by the provisions of this act or otherwise, and taking possession of said mortgage property under any of the provisions of this act, shall not be a waiver of the foreclosure of said mortgage.

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How enforced.

Lien not waived or ineffectual by acceptance of city of mortgage, &c.

SECT. 12. This act shall not take effect until it shall have been duly accepted by said city of Bangor by a vote of the legal voters thereof voting in ward meetings duly and legally called within eleven months from and after its approval, and by a majority of at least three-fourths of the legal voters of said city present and voting at said meetings as aforesaid, nor shall said act take effect until the same shall be duly accepted by the city council of said city by concurrent vote of the two boards of said council, and by a majority of two-thirds of the aldermen present and voting, and a majority of two-thirds of the common council at a meeting duly called for the purpose, at least thirty days subsequent to its acceptance by vote of the city, as hereinbefore provided. The returns of such ward meetings shall be made to the aldermen of said city, and by them counted and declared, and the clerk of said city shall make a record thereof, and if the act shall be accepted as aforesaid, then after such acceptance and record thereof all the parts of this act shall take effect and be in full force thereafter; and an act entitled "An act to authorize the city of Bangor to aid the construction of the European and North American Railway," approved March twenty-five, eighteen hundred and sixty-four, and an act entitled "An act to authorize the city of Bangor to further aid the construction of the European and North American Railway," approved February twenty, eighteen hundred and sixty-six, shall be void and of no further effect.

Meetings for acceptance of charter and proceedings therein.

SECT. 13. This act shall take effect when approved.

Approved February 24, 1868.

Chapter 573.

An act to incorporate the Maine General Hospital.

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

SECT. 1. John T. Gilman, William Willis, John B. Brown, Israel

Corporators.