

MAINE STATE LEGISLATURE

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ACTS AND RESOLVES

331

OF THE

FIFTY-SECOND LEGISLATURE

OF THE

STATE OF MAINE.

1873.

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1873.

PRIVATE AND SPECIAL LAWS

OF THE

STATE OF MAINE.

1873.

CHAP. 332.

Chapter 332.

An act to amend chapter three hundred and ten, approved February fifth, eighteen hundred and seventy, entitled "an act for the preservation of fish in Webb's pond, in Franklin county."

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

Sec. 2, chap. 310,
acts of '70, to
amend.

SECT. 1. Section second, of chapter three hundred and ten of the special laws of eighteen hundred and seventy, is hereby amended, by striking out the word "twenty-five" in the second line, and inserting the word 'fifteen,' and by striking out in the third line, the words "in an action of debt," and insert the words 'by complaint before a trial justice,' so that said section as amended, shall read as follows:

Forfeiture for
violation.

'SECT. 2. Any person who shall violate any of the provisions of this act, shall forfeit the sum of fifteen dollars, to be recovered by complaint before a trial justice, one-half to the use of the town where the offence is committed, and one-half to the person prosecuting therefor.'

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

Approved February 20, 1873.

Chapter 333.

An act to authorize the city of Bangor to loan its credit to aid in the construction of the Northern Aroostook Railroad.

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

Northern Aroos-
took Railroad, in
aid of.

SECT. 1. The city of Bangor is hereby authorized to loan its credit to the Northern Aroostook Railroad Company, in aid of the construction of its railroad upon the most feasible and convenient location of its line from some point on the railroad of the consolidated European and North American Railway Company, in the town of Mattawamkeag, from thence up the Penobscot river to Salmon stream, or Nicasou, and from thence to the town of Presque Isle, or its vicinity, and from thence to the St. John river, in or near the town of Van Buren.

—route of.

—location and
construction,
when to be
completed.

SECT. 2. If this act shall be accepted, as hereinafter provided, and said company shall within two years from its approval locate its main line of railroad according to the provisions of its charter, and finish and complete its railroad from some point on the line of the consolidated European and North American Railway, in the town of Mattawamkeag, in the county of Penobscot, thence northerly ten miles, in all respects to the approval of the mayor and aldermen for the time being of the said city, of the gauge of four feet eight and one-half inches, 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, and shall have fenced said railroad, all 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 the scrip of said city, to the amount of one hundred and fifty thousand dollars, and on the further like completion of an additional ten miles of said road and acquirement of the right of way according to law, with fencing as aforesaid, the city treasurer shall forthwith issue to the directors of said company an additional sum of one hundred and fifty thousand dollars of the scrip of said city, for the purposes aforesaid, and so on for every additional ten miles of completed road as aforesaid, with the other like conditions as aforesaid, the city treasurer shall forthwith issue to the directors of said company an additional sum of one hundred and fifty thousand dollars of the scrip of said city, for the purposes aforesaid. All of said scrip shall be signed by the city treasurer and countersigned by the mayor for the time being, and be issued in sums of not less than one hundred dollars nor more than five thousand dollars each, with coupons for interest at seven per cent. per annum attached, payable semi-annually, payable to the holder thereof in lawful money of the United States, at 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 two 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 the coupons shall be payable at the respective dates at which the coupons of the first issue shall be due; 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.

Scrip, when to be issued.

—additional may be issued.

—how signed and issued.

—interest on and when payable.

—principal, when payable.

Proviso.

Scrip and coupons, payment of, how secured.

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 coupons, and in all respects will hold and save harmless the said city on account of the issue of the same and from all liabilities of said city in any

Bond, how executed, and conditions of.

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Scrip, as collateral, to be issued by company.

—when and where payable.

—how held.

—may be sold.

—proceeds of sale, how applied.

Mortgage of road.

—how executed.

—how recorded.

—a full transfer of road and property.

way arising from anything done under this act; 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 place and for the same denominations and 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 its railroad then and thereafter to be constructed, and of all the land and other property held and used by said company for the construction of said road, with all the fixtures, appendages and appurtenances thereof, and all the property, real or personal, which said company then has or may thereafter acquire, and the franchise of said company without prior incumbrance. Said mortgage shall be executed according to the laws of the state by its president, or such officers of said company as said directors may by their vote direct, 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 record shall be required; and said mortgage so executed and delivered and recorded in the registry of deeds in the county of Penobscot, shall to all intents and purposes be and the same is hereby declared to be a full and complete transfer of said railroad, and of all the property of said company, real and personal, then owned or subsequently acquired, wherever the same may be found or situated, and also the franchises of said company with all its future additions and amendments.

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 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 purpose of such foreclosure, and the certificate of the register of deeds shall be prima facie evidence of such notice and publication of foreclosure. Upon the expiration of three years from and after such first publication, if the conditions shall not within that time have been fulfilled, the foreclosure shall be complete, and shall make the title to said road and to all said property and said franchise, absolute in said city and the right of redemption shall be forever foreclosed.

CHAP. 333.

Mortgage, foreclosure of.

Notice.

Evidence of notice.

Foreclosure, when completed.

SECT. 6. If the directors of said company shall at any time neglect or omit to pay the interest which may become due and as it becomes due upon any portion of the scrip issued and delivered under the provisions of this act, or to pay the principal as it becomes due, or to comply with any of the conditions of said bond, the city of Bangor may take possession in the manner hereinafter provided of the whole of said railroad, and of all the property of said company, and of the franchise thereof, and may hold the same and apply the income thereof to make up and supply such deficiencies and expenses as may occur while the same are so held until all deficiencies and expenses shall be fully made up and discharged. A written notice signed by the mayor and a majority of the aldermen and served upon the president or treasurer or any director of said company, or if there be none such, upon any stockholder of said company, stating that the city thereby takes actual possession of the whole line of the railroad and of the property and franchise of the company, shall be a sufficient actual possession thereof, and shall be a legal transfer of the same for the purposes aforesaid to the city, and shall enable the city to hold the same against any other claims thereon until such purposes have been fully accomplished.

Possession of road forfeited by non-compliance.

—how taken.

SECT. 7. All moneys received by or for said railroad company after notice as aforesaid from any source whatever and by whomsoever the same may be received, shall belong to and be held for the use and benefit of said city in manner and for the purposes herein provided, and shall after notice given to the persons receiving the same respectively, be by them paid to the city treasurer, which payment shall be an effectual discharge from all claims of said company therefor; but if any person without such notice shall make payment of moneys so received to the treasurer of said

Moneys received, how applied.

CHAP. 333.

Balance of money, to whom paid.

—when paid and how applied.

Liable for violation.

Suit, how instituted.

Writ of injunction.

Possession of road forfeited in case of neglect to pay interest.

—how managed.

Legal rights.

Earnings of road, how applied.

company, such payment shall be a discharge of all claims of the city therefor against such person. All moneys received by the treasurer of said company after such notice or in his hands at the time such notice may be given, shall be by him paid to the city treasurer, after deducting the amount expended or actually due for the running expenses of the road, for the services of the officers of the company, and for repairs necessary for conducting the ordinary operations of the road. Such payments to the city treasurer shall be made at the end of every calendar month, and shall be by him applied to the payment of all the interest and principal due as aforesaid, and any person who shall pay or apply any moneys received as aforesaid in any manner contrary to the foregoing provisions, shall be liable therefor, and the same may be recovered in an action for money had and received, in the name of the city treasurer, whose duty it shall be to sue for the same to be by him held and applied as hereinafter required.

SECT. 8. For the purpose 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, 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, or any such bill in vacation or in term time, with or without notice, and the court shall have jurisdiction of the subject matter of such suits, 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. If said company shall at any time neglect or omit to pay the interest which may become due and as it becomes due upon any portion of the scrip issued and delivered under the provisions of this act, or to pay the principal thereof as it shall become due, or to comply with any of the provisions of said bond, then said city of Bangor may take actual possession of said road, with all its appurtenances, and manage the same as fully as a board of directors of said company for the time being, may appoint the requisite officers and agents, and discharge the same, may fix the rate of fare and tolls, subject to the restrictions of the charter of said company, and may demand and receive the same, with the right to prosecute and defend suits in the name of said company, and may do all things which said company itself, or the directors thereof, might or could lawfully do, and after paying the running expenses said city may apply sufficient of the earnings of said road to keep it and 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 apply the residue of said earnings, first to the payment of all expenses and liabilities of said city in taking possession and managing said road, and secondly to the payment of said interest, coupons, scrip or bond as aforesaid; and whenever said interest and all dishonored coupons, scrip or bonds, secured by said mortgage referred to in this act, 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 at any time prior to the completion of the foreclosure as provided for in section five, but not subsequent thereto; *provided however*, said city, 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 funds received from the earnings of said road to pay any damages that may arise in the management thereof, for which said city shall be liable in law to third parties; and the delivery back to said company of any property of said company in its possession shall be no discharge of its lien thereon, nor prevent said city from taking possession of said road and property, on any future breach of the condition of said bond.

SECT. 10. If the said company shall, after notice of possession as aforesaid, neglect to choose directors thereof, or other necessary officers, or none such shall be found, the mayor and aldermen of the city shall appoint a board of directors consisting of not less than seven persons, or any other necessary officers, and the persons so appointed shall have all the power and authority of officers chosen or appointed under the provisions of the act establishing said company, and shall, upon the acceptance of such offices, be subject to all the duties and liabilities thereof, and shall be entitled to a reasonable compensation for their services.

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 whole of said road, whensoever constructed, its franchise, and all its appendages, and all real and personal property of said company, then owned or thereafter acquired, which lien shall have preference, and be prior to all other liens and incumbrances whatever on all of said road, wherever the same is now, or may hereafter be located, and on said franchise, and on all other property, real and personal, of said company, and said lien shall be enforced and all the rights and interest of said city shall be protected, when necessary by suitable and proper judgments, injunctions or decrees of the supreme judicial court in a suit or suits in equity, which power

CHAP. 333.

Balance of earnings, how applied.

Possession of road to revert to company.

Proviso.

Lien on property to cover damages.

Directors, how appointed.

—number of.

—powers of.

Lien additional.

—preferred.

—how enforced.

CHAP. 333. 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 on the part of said city of any mortgage or other securities contemplated by the provisions of this act or otherwise.

Lien not waived in certain cases.

Director, one to be chosen by city.

—authority and compensation of.

—right to choose, when to cease.

—removal of.

Act, when to take effect.

Ward meetings, how called.

Scrip, issue of, prohibited, except under certain conditions.

SECT. 12. The city may appoint, under this act, one director of said company, who shall not be required to be a stockholder, who shall be annually chosen by the city council, in joint ballot, before the annual meeting of said company for the choice of officers, or as soon thereafter as may be convenient, who shall have the same authority in transacting the business of said company, and who shall be entitled to like compensation from said company as any other director. But the right to choose such directors shall cease when the loan contemplated shall be extinguished. Said city council may at any time, by a concurrent vote of each board, remove any director thus appointed and appoint another in his stead in manner aforesaid.

SECT. 13. This act shall not take effect or be of any force, until the city council of said city, by a concurrent vote of at least two-thirds of the members of each branch of the city council, present and voting, shall approve the same, and shall also submit the same to a vote of the legal voters of the city; and the legal voters of the city in legal ward meetings, shall, by a vote of two-thirds of all the votes thrown in the city at such meetings, accept the same. But if within two years from the approval of this act, said city shall accept said act, by such concurrent vote of said city council, and of said legal voters as aforesaid, then said act shall be in force thereafter and be binding upon said city according to its true tenor and effect, but not otherwise. Said ward meetings shall be called at such time or times as the mayor and aldermen may appoint and be notified, held, returns made, declared and recorded agreeably to the provisions of the city charter of said city for calling and holding ward meetings for the choice of city officers and the returns thereof. But nothing in this act shall in any manner authorize said city to issue its scrip, as aforesaid, for any part of said road, unless in addition to the securities before named, a good and sufficient bond of indemnity and obligation for the payment of the coupons as they shall become due, on all the scrip then and thereafter to be issued by said city in aid of said road, and saving said city harmless from all loss, liability or expense on said coupons, and for keeping said Northern Aroostook Railroad in repair, acceptable to the mayor and aldermen of said city for the time being, and to be approved by a vote of said mayor and two-thirds of said aldermen present and voting, shall first have been furnished said city, by said consolidated European and North American Railway Company, or by

some other railroad company or companies, thereto duly authorized by law as hereinafter provided, or by some other persons or parties covenanting and binding themselves as aforesaid. And said consolidated European and North American Railway Company and other railroad companies between Bangor and Boston, incorporated by and within this state, are hereby jointly and severally authorized and empowered, by a vote of their stockholders at a meeting duly called for that purpose, to agree to guarantee the payment of said coupons as they shall become due, and to save said city harmless from all loss, liability or expense arising from said coupons, and to keep said Northern Aroostook Railroad in repair, and may, thereupon, authorize and direct the presidents of said railroads respectively, to execute and deliver to the treasurer of said city such bond of indemnity and obligation as aforesaid. And the president of said consolidated European and North American Railway Company and of either or all of said railroad companies, thus authorized and acting as aforesaid, shall, in compliance with a vote of their stockholders aforesaid, execute and deliver said bond of indemnity and obligation to said city; and said consolidated European and North American Railway Company, and either or all of said railroad companies as aforesaid, are hereby authorized to make, execute and fulfil all the stipulations and conditions of such bond of indemnity and obligation; and upon its acceptance and approval by a vote of the mayor and two-thirds of the board of aldermen of said city for the time being, present and voting, as a good and sufficient bond of indemnity and obligation as aforesaid, then, on compliance with the terms and conditions hereinbefore named, said scrip may be issued by said city, but not otherwise. But no scrip shall be issued for any part of said railroad constructed at any time subsequent to the period now fixed in the charter of said company for the completion of said railroad, to wit: January one, eighteen hundred and seventy-eight.

Guarantee for
payment of
coupons.

Bond of indem-
nity.

—how executed
and fulfilment of.

Scrip to be issued.

Limit.

SECT. 14. The Northern Aroostook Railroad Company is hereby authorized to contract with the consolidated European and North American Railway Company, and with other railroad companies between the city of Bangor and the city of Boston, jointly or severally, to furnish all the rolling stock and equipment necessary, and to operate the railroad of said Northern Aroostook Railroad Company upon such terms and conditions and for such time as the parties to the contract may agree, but subject however to the prior rights, privileges and powers secured and designed to be secured to said city of Bangor, under and by virtue of this act. And such contracts must be so made as in no manner to impair or delay the rights of said city to take possession of and operate said railroad as is herein provided, or any other rights of said

Contract with
other companies
authorized.

Conditions of.

Rights of city to
be protected.

CHAP. 333. city under this act; and must also be so made as to provide for and secure the keeping in repair of said Northern Aroostook Railroad by any company or companies so contracting to operate the same. And said consolidated European and North American Railway Company, and said other railroad companies between said Bangor and said Boston, are hereby authorized jointly and severally to enter into and make the contract aforesaid with said Northern Aroostook Railroad Company, subject to the restrictions and limitations herein expressed. And said consolidated European and North American Railway Company and other railroad companies between Bangor and Boston, may jointly or severally make such other contracts with said Northern Aroostook Railroad Company, with such provisions and arrangements in regard to the business passing between and upon said railroads as the parties to the contract shall from time to time find necessary or convenient promptly to do said business or to increase the same; and said parties may set apart from the receipts or earnings of said business such portion thereof as they may deem necessary or advisable to provide funds to pay the interest upon the scrip or bonds issued by the city of Bangor as heretofore provided; or they may make such other provisions and agreements to secure and guarantee the payment of said interest on said scrip or bonds as they may find necessary or advisable; *provided however*, that nothing in any such contracts shall in any manner defeat, delay or impair any of the rights, powers and privileges secured and designed to be secured to said city by this act or any of its provisions.

Other contracts provided for.

Portion of earnings to be set apart to meet liabilities.

Proviso.

Arbitrators to determine questions in case of disagreement.

—how appointed.

—report, how made.

—report of, when final.

SECT. 15. Whenever either the Northern Aroostook Railroad Company, or the consolidated European and North American Railway Company shall be unable to agree with the other company in respect of the tariff and division of receipts for the transportation of passengers and freight passing in whole or in part over both roads, either company may apply in writing to the chief justice of the supreme judicial court of Maine for the appointment of a board of three arbitrators to examine, hear and determine all questions connected with said tariff and division of receipts in dispute between said companies. The chairman of said board shall be appointed by the said chief justice of said court, one shall be appointed by the governor of the State of Maine, and one by the mayor and aldermen of the city of Bangor. A report of said board, or a majority thereof, shall be made to the supreme judicial court sitting in Penobscot county, as soon as may be, and said court shall cause reasonable notice to be given to each party, and may accept or recommit said report for cause shown to it, and when accepted the determination of a majority of said board shall be final and binding upon both companies for one year from its

acceptance and until a new application shall be made by one or both after the expiration of said year. Said board may determine how the expense and cost of all proceedings under this section shall be borne, and said supreme judicial court may enter judgment and issue execution for the payment of cost when necessary.

CHAP. 334.

Board may determine how cost be paid.

SECT. 16. This act shall take effect when approved.

Approved February 21, 1873.

Chapter 334.

An act to amend section one of chapter five hundred and forty-six of the private and special laws of eighteen hundred and fifty-two, relating to the Mercantile Library Association of Portland.

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

Section one of chapter five hundred and forty-six of the private and special laws of eighteen hundred and fifty-two is amended by striking out the word "fifty" and substituting therefor the words 'one hundred,' so that said act, when amended, shall read as follows :

Sec. 1, chap. 516, acts of 1872, amended.

'SECT. 1. The Mercantile Library Association of Portland, a voluntary association now existing in the city of Portland, for the purpose of promoting and diffusing knowledge among young men now engaged in, or destined for, the mercantile profession, is hereby created a body politic and corporate by the same name, and with power to take by purchase, bequest or otherwise, and to hold, transfer and convey real and personal property to the amount of one hundred thousand dollars, the legal title of which shall be in five trustees, but subject to the care and management and disposal thereof to the control and direction of a joint board of directors, for the time being, which board of directors shall not consist of more than eleven members.'

Corporate name.

Purpose.

May hold real and personal estate.

Title of property vested in trustees.

Approved February 21, 1873.

Chapter 335.

An act to authorize James Roberts and others to extend their wharf into tide waters in the town of Vinalhaven.

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

SECT. 1. James Roberts, E. L. Roberts, James L. Smith, Simon G. Webster, their heirs, associates and assigns, are hereby

Authorized to extend wharf.