

## SENATE . . . No. 15.

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### Commonwealth of Massachusetts.

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IN SENATE, January 16, 1871.

The Committee on the Boston, Hartford and Erie Railroad Company, to whom was committed so much of the Governor's Address as related to that subject, have made investigation in relation to said company and proceedings connected therewith, more especially relating to the securities held by the Commonwealth against said corporation, and their preservation and enforcement in such a manner as to protect the interests of the State.

The State loans to said corporation amount to about \$3,600,000, which are reduced by the sinking fund to about \$3,000,000, for which the only security of the Commonwealth, beyond the obligation of the company to pay its indebtedness, is three million six hundred thousand dollars of the Berdell mortgage bonds. The mortgage to secure these bonds, to which the Committee refers as a part of this Report, was made by the Boston, Hartford and Erie Railroad Company to Robert H. Berdell, Dudley S. Gregory and John C. Bancroft Davis, as trustees, bearing date March 19th, 1866, upon the entire road of the company, with all the lands included, or which might be "included in the location of said railroad, or acquired for the uses of the company within the terminal points of the road, but not including the lands at the termini at Boston and at Fishkill, which are outside of the location of said railroad, together with all their lands, tracks, lines, rails, bridges, ways,

depots, stations, water-tanks, shops, buildings, piers, wharves, erections, fences, walls, fixtures, privileges, franchises, rights, leases and charters; also all the like estate, roads, railroads and structures, and matters and things pertaining thereto, that may be hereafter acquired or constructed or belong to or be controlled by said company."

Said mortgage was made to secure twenty thousand bonds of one thousand dollars each. There are underlying the Berdell mortgage other mortgages upon different parts of road of said company, amounting to about \$2,250,000, of which about \$1,800,000 are upon the Providence, Hartford and Fishkill road, which is now owned by the Boston, Hartford and Erie Railroad Company, on which the time of payment is extended to 1874 or 1875.

It appeared to the Committee that this security to the Commonwealth was of great value, if properly preserved and applied to the payment of the bonds. The method of foreclosure of the mortgage, and the respective rights of the bondholders are clearly set forth in the mortgage. (See House Doc., No. 5.) But the danger to be guarded against in order to protect the security of the Commonwealth is to prevent officers of the company and those holding interests adverse to the bondholders from frittering away the securities by abstracting and diverting from the mortgage property covered by it, and destroying the foundation of the security itself. These interests adverse to the bondholders manifest themselves in a great variety of suits, in which it oftentimes seems apparent that there is collusion between plaintiff and defendant, whereby important judgments and decrees have been obtained, and others would have been obtained except for the ceaseless vigilance of certain bondholders outside of the Commonwealth.

Messrs. Moses Kimball, Thomas Talbot and Avery Plumer having succeeded to the trusteeship under the Berdell mortgage, pursuant to its provisions, in July, 1870, a suit in equity was commenced in this State by one George Ellis for the alleged purpose, among others, of ascertaining who were the rightful trustees under said mortgage, alleging waste, and praying for the appointment of receivers pending the litigation, whereupon receivers were appointed and the suit is still pending in the court. Similar suits were commenced in Connecti-

cut, Rhode Island and New York, with similar results. And the receivers appointed in these several States took possession of and have since continued to run the road, except the part consisting of the Providence, Hartford and Fishkill road, which is in the possession of the first mortgage bondholders, because of certain coupons remaining unpaid of about \$200,000; upon the payment whereof that portion of the road will revert into the hands of the receiver.

The receivers have been authorized by the supreme court of this State, and by the courts of New York, Connecticut and Rhode Island, to raise \$100,000 to pay rents due to the Norwich and Worcester Railroad Company. They also have negotiated a contract with N. C. Munson, to complete by May next, the road from Putnam to Willimantic, a distance of about twenty-six miles, of which about twenty miles had been previously graded, for \$300,000, for which they issued certificates secured on the earnings of the road. This contract has been confirmed by the supreme judicial court of this State, and by the United States circuit court, and the work has been entered upon and about half completed. The completion of this part of the road seems of great importance on account of its junction at Willimantic with other roads; and also that by this means and the completion of a similar part of a road beyond Willimantic, which it is expected will be completed during the coming summer, a through line to New York by way of this road will be opened about twenty-six miles shorter than any other existing route.

Said George Ellis, who is suspected of acting in collusion with the company and adverse to the interests of the bondholders, has recently instituted a suit in the name of the attorney-general by *quo warranto*, in New York, against the company, to take away its charter, in which process was returnable January 14th, instant. What the effect of a default on the part of the company in that suit might be upon the mortgage bonds held by the Commonwealth, is a grave matter of apprehension, and in which proceeding it is plain the Commonwealth as holder of such bonds has the right to appear to protect her interests. The receivers in New York might appear in said proceedings, but rumors have reached the Committee (whether reliable or not they are unable to say), that said Ellis has dis-

continued his suit upon which the receivers were appointed. It also appears to the Committee that an additional receiver has been appointed in Rhode Island and New York, in place of one resigned against the resistance of the bondholders in Rhode Island, on which an appeal is now pending; and also it appeared that said Ellis and the company have strenuously resisted the appearance of Mr. J. C. Ayer, a holder of a large amount of said bonds, as complainant in said Ellis's suits in said several States, although said plaintiff in his bill states that he brings his action on behalf of himself and of all other bondholders similarly situated with himself. A petition in bankruptcy against said company has been filed in the United States court for the district of Massachusetts, which, having been decided in favor of the application, is now pending on appeal before the judges of the circuit. And subsequently one James Alden, supposed to act in the interest of the officers of the company or others adverse to the interests of the bondholders, has filed a like application in the State of Connecticut and also New York, both returnable on the 14th day of January, instant, to which proceedings certain bondholders in this State have caused an appearance to be entered for the purpose of resisting such applications. These applications are the cause of serious apprehension by the bondholders. What the purpose of the instigators of these applications may be has not been made clearly to appear to the Committee, but circumstances lead to the suspicion that their object may be to secure an assignee favorable to the officers of the company, through whom a sale may be effected of the property of the company under said mortgage, and the proceeds thereof held as the security in place of the property itself, through which means the property may be acquired by those adverse to the bondholders, at a great sacrifice, and the security to the bondholders be lost or greatly impaired.

A great number of suits by individual claimants have been brought against the company, some of which are still pending, and some have already gone to judgment.

The interests of various parties are often at the same time in different directions, as the same person may be at the same time bondholder, stockholder, creditor, or private holder of title to property of the company, which, for some cause unknown to

the Committee, has been placed in his hands. In these diverse and conflicting interests, oftentimes in the same party, suits may be brought in favor of one interest, and defended or permitted to go by default, as the stronger interests may prevail, which may prejudice the interests of the bondholders.

A judgment has been obtained against the company in favor of one Dillon for \$800,000 in New York, and another in Connecticut in favor of the same person for \$200,000 upon default; also other judgments have been obtained; upon which judgments attempts have been made, and are being made, to seize property claimed by the bondholders to be covered by the said mortgage, a portion of which property has been sold. One parcel of real estate claimed by the bondholders to be covered by said mortgage, standing in the name of a private individual, has been conveyed by the officers of said company to another claimant against the company, who is now prosecuting his suit for its recovery, ignoring all claims of the bondholders thereon.

Wherefore, it appears to the Committee that, during the pendency of the suits to determine who are the rightful trustees under said mortgage, and until the trustees can take possession of the property under the mortgage, and foreclose the same, some provision is necessary for the protection of the interests of the Commonwealth, and they accordingly, as relating to that part of the duties assigned them, report the accompanying Resolve.

T. L. WAKEFIELD, *Chairman.*

## Commonwealth of Massachusetts.

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In the Year One Thousand Eight Hundred and Seventy-One.

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### R E S O L V E

Concerning the Boston, Hartford and Erie Railroad Company.

*Resolved*, That his excellency the governor be and he is hereby authorized at his discretion to take such measures as he shall deem proper, to maintain and enforce the rights and interests of the Commonwealth in and under the bonds of the Boston, Hartford and Erie Railroad Company, secured by the mortgage made by said company to Robert H. Berdell and others, trustees, dated March nineteenth, in the year one thousand eight hundred and sixty-six, and to appoint and employ such agents or attorneys as may be necessary for this purpose; and that for the expenses incurred in the execution of this resolve, the governor be and he is hereby authorized to draw his warrant on the treasury to an amount not exceeding in all the sum of fifty thousand dollars.