

File No. 7356 Continued.

OPINION.

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It is a matter of current financial history that a large number of the income bondholders formed a protective committee of their own, which committee claimed that while the railroad, under the income mortgage, had the right to provide for necessary repairs and maintenance before paying interest on the income bonds, it could not, under that mortgage, make extensions of its system or improvements to its system without first providing for the unpaid interest. I do not understand that the railroad's counsel ever seriously disputed this proposition, but the controversy rather related to what constituted necessary repairs and maintenance, on the one hand, and improvements and extensions, on the other. The contention of the bondholders was that a large amount of the expenditures which the company had made had been for improvements and extensions which the company was not authorized to make without first providing for the unpaid interest on the income bonds, and that, therefore, at least a large part of the interest on the income bonds had been earned, but had been diverted to other sources. The contention of the railroad was that it had used its earnings for no unauthorized purpose, that the expenditures it had made were all such as had precedence over the income bondholders' right to demand interest, and that this interest had not been paid because it had not been earned.

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Therefore, in the summer of 1906, the situation of the railroad was that it was carrying a burden of nearly \$1,400,000, which it must pay to the income bondholders as soon as earned, and which burden was increasing at the rate of nearly \$560,000 each year, and until that burden was discharged and paid not only could the company not make certain improvements of and extensions to its system, which it had in view, and which it was considered would largely increase the company's earning capacity, but there was also an existing dispute between the company and a large number of its income bondholders as to whether the company had or had not already earned interest on the income bonds, and diverted it to other sources. The situation of the income bondholders was that no interest had been paid on their bonds since June 1, 1904, and if any interest should have been paid them during that period, that was a fact which could only be established