

File No. 7356 Continued.

OPINION.

num.

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It is important, however, to note, that in exchanging their coupons for these funding bonds, the income bondholders do not receive the funding bonds in unconditional satisfaction or payment of the interest represented by the surrendered coupons. It may be that, in order for interest to be "actually paid", within the meaning of the Maryland Statute, a cash payment is not necessarily contemplated, but that the interest might be "actually paid" in kind, by some new security or other property, for example, or even by a new obligation of the corporation itself; and that if the same is given in payment or satisfaction of the interest due, that then that interest would be "actually paid". In the present case, however, the new obligation which the company gives in exchange for the old, does not pay or discharge the old; the funding bond does not constitute a payment and satisfaction of the interest coupon for which it is exchanged; but only constitutes a conditional or contingent payment thereof.

This clearly appears from Article 3, section 4, of the funding agreement, which provides:

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1. That the surrendered coupons (for which the funding bonds are issued) are not to be merged or cancelled, until the company shall have paid to the holders of all of the income bonds all the instalments of interest of the same maturities as those included in the funded interest. There is some doubt, on account of the phraseology of the funding agreement, whether this can be before 1936 (when the principal of the funding bonds is due), or whether it may be done prior to ~~that time~~. The doubt arises because the language used in the agreement is susceptible of the interpretation that as the railroad earns interest on the income bonds (within the meaning of the income mortgage), it may make a payment of the coupons funded, as against the depositing bondholders, and so far as the railroad is concerned, by depositing such earned interest with the Trustee; although as against non-depositing bondholders, payment could of course, be only made in cash. At the present time, however, no deposits have been made with the Trustee which could constitute a payment by the railroad of the interest funded, and of course the interest not funded has not as yet been paid either; and I am informed that there is no