

SUPREME COURT OF UNITED STATES

Towne

Vs.

Eisner, Collector of United States Internal Revenue for the Third District of the State of
New York.

No. 563.

Argued Dec. 12, 1917.

Decided Jan. 7, 1918.)

[Syllabus from page 418 intentionally omitted]

Messrs. Charles E. Hughes, George Welwood Murray, Charles P. Howland, and Louis H. Porter, all
of New York City, for plaintiff in error.

[Argument of Counsel from pages 419-421 intentionally omitted]

Mr. Solicitor General Davis, of Washington, D. C., for defendant in error.

[Argument of Counsel from pages 421-424 intentionally omitted]

Mr. Justice HOLMES delivered the opinion of the Court.

This is a suit to recover the amount of a tax paid under duress in respect of a stock dividend alleged
by the Government to be income. A demurrer to the declaration was sustained by the District Court
and judgment was entered for the defendant. 242 Fed. 702. The facts alleged are that the corporation
voted on December 17, 1913, to transfer \$1,500,000 surplus, being profits earned before January 1,
1913, to its capital account and to issue fifteen thousand shares of stock representing the same to its

stockholders of record on December 26; that the distribution took place on January 2, 1914, and that the plaintiff received as his due proportion four thousand one hundred and seventy-four and a half shares. The defendant compelled the plaintiff to pay an income tax upon this stock as equivalent to \$417,450 income in cash. The District Court held that the stock was income within the meaning of the Income Tax of October 3, 1913, c. 16, Section II; A, subdivisions 1 and 2; and B. 38 Stat. 114, 116, 167. It also held that the Act so construed was constitutional, whereas the declaration set up that so far as the Act purported to confer power to make this levy it was unconstitutional and void.

The Government in the first place moves to dismiss the case for want of jurisdiction, on the ground that the only question here is the construction of the statute not its constitutionality. It argues that if such a stock dividend is not income within the meaning of the Constitution it is not income within the intent of the statute, and hence that the meaning of the Sixteenth Amendment is not an immediate issue, and is important only as throwing light on the construction of the Act. But it is not necessarily true that income means the same thing in the Constitution and the Act. A word is not a crystal, transparent and unchanged, it is the skin of a living thought and may vary greatly in color and content according to the circumstances and the time in which it is used. *Lamar v. United States*, [1916] USSC 39; 240 U. S. 60, 65[1916] USSC 39; , 36 Sup. Ct. 255, 60 L. Ed. 526. Whatever the meaning of the Constitution, the Government had applied its force to the plaintiff, on the assertion that the statute authorized it to do so, before the suit was brought, and the Court below has sanctioned its course. The plaintiff says that the statute as it is construed and administered is unconstitutional. He is not to be defeated by the reply that the Government does not adhere to the construction by virtue of which alone it has taken and keeps the plaintiff's money, if this Court should think that the construction would make the Act unconstitutional. While it keeps the money it opens the question whether the Act construed as it has construed it can be maintained. The motion to dismiss is overruled. *Billings v. United States*, [1914] USSC 49; 232 U. S. 261, 276[1914] USSC 49; , 34 Sup. Ct. 421, 58 L. Ed. 596; *B. Altman & Co. v. United States*, [1912] USSC 126; 224 U. S. 583, 596, 597[1912] USSC 126; , 32 Sup. Ct. 593, 56 L. Ed. 894.

The case being properly here, however, the construction of the act is open, as well as its constitutionality if construed as the Government has construed it by its conduct. *Billings v. United States*, *ubi supra*. Notwithstanding the thoughtful discussion that the case received below we cannot doubt that the dividend was capital as well for the purposes of the Income Tax Law as for distribution between tenant for life and remainderman. What was said by this Court upon the latter question is equally true for the former. 'A stock dividend really takes nothing from the property of the corporation, and adds nothing to the interests of the shareholders. Its property is not diminished, and their interests are not increased. * * * The proportional interests of each shareholder remains the same. The only change is in the evidence which represents that interest, the new shares and the original shares together representing the same proportional interest that the original shares represented before the issue of new ones.' *Gibbons v. Mahon*, [1890] USSC 175; 136 U. S. 549, 559, 560[1890] USSC 175; , 10 Sup. Ct. 1057, 34 L. Ed. 525. In short, the corporation is no poorer and the stockholder is no richer than they were before. *Logan County v. United States*, [1898] USSC 33; 169 U. S. 255, 261[1898] USSC 33; , 18 Sup. Ct. 361, 42 L. Ed. 737. If the plaintiff gained any small advantage by the change, it certainly was not an advantage of \$417,450, the sum upon which he was taxed. It is alleged and admitted that he receives no more in the way of dividends and that his old and new certificates together are worth only what the old ones were worth

before. If the sum had been carried from surplus to capital account without a corresponding issue of stock certificates, which there was nothing in the nature of things to prevent, we do not suppose that any one would contend that the plaintiff had received an accession to his income. Presumably his certificate would have the same value as before. Again, if certificates for \$1,000 par were split up into ten certificates each, for \$100, we presume that no one would call the new certificates income. What has happened is that the plaintiff's old certificates have been split up in effect and have diminished in value to the extent of the value of the new.

Judgment reversed.

Mr. Justice McKENNA concurs in the result.