

SUPREME COURT OF UNITED STATES

Eisner, Internal Revenue Collector,

Vs.

Macomber.

08.03.1920

Mr. Assistant Attorney General Frierson, for plaintiff in error.

[Argument of Counsel from pages 190-194 intentionally omitted]

Messrs. Charles E. Hughes and George Welwood Murray, both of New York City, for defendant in error.

[Argument of Counsel from pages 194-199 intentionally omitted]

Mr. Justice PITNEY delivered the opinion of the Court.

This case presents the question whether, by virtue of the [Sixteenth Amendment](#), Congress has the power to tax, as income of the stockholder and without apportionment, a stock dividend made lawfully and in good faith against profits accumulated by the corporation since March 1, 1913.

It arises under the Revenue Act of September 8, 1916 (39 Stat. 756 et seq., c. 463 [Comp. St. § 6336a et seq.]), which, in our opinion (notwithstanding a contention of the government that will be noticed), plainly evinces the purpose of Congress to tax stock dividends as income.¹

The facts, in outline, are as follows:

On January 1, 1916, the Standard Oil Company of California, a corporation of that state, out of an authorized capital stock of \$100,000,000, had shares of stock outstanding, par value \$100 each, amounting in round figures to \$50,000,000. In addition, it had surplus and undivided profits invested in plant, property, and business and required for the purposes of the corporation, amounting to about \$45,000,000, of which about \$20,000,000 had been earned prior to March 1, 1913, the balance thereafter. In January, 1916, in order to readjust the capitalization, the board of directors decided to issue additional shares sufficient to constitute a stock dividend of 50 per cent. of the outstanding stock, and to transfer from surplus account to capital stock account an amount equivalent to such issue. Appropriate resolutions were adopted, an amount equivalent to the par value of the proposed new stock was transferred accordingly, and the new stock duly issued against it and divided among the stockholders.

Defendant in error, being the owner of 2,200 shares of the old stock, received certificates for 1,100 additional shares, of which 18.07 per cent., or 198.77 shares, par value \$19,877, were treated as representing surplus earned between March 1, 1913, and January 1, 1916. She was called upon to pay, and did pay under protest, a tax imposed under the Revenue Act of 1916, based upon a supposed income of \$19,877 because of the new shares; and an appeal to the Commissioner of Internal Revenue having been disallowed, she brought action against the Collector to recover the tax. In her complaint she alleged the above facts, and contended that in imposing such a tax the Revenue Act of 1916 violated article 1, § 2, cl. 3, and article 1, § 9, cl. 4, of the [Constitution](#) of the United States, requiring direct taxes to be apportioned according to population, and that the stock dividend was not income within the meaning of the Sixteenth Amendment. A general demurrer to the complaint was overruled upon the authority of *Towne v. Eisner*, [\[1918\] USSC 7; 245 U. S. 418, 38 Sup. Ct. 158, 62 L. Ed. 372](#), L. R. A. 1918D, 254; and, defendant having failed to plead further, final judgment went against him. To review it, the present writ of error is prosecuted.

The case was argued at the last term, and reargued at the present term, both orally and by additional briefs.

We are constrained to hold that the judgment of the District Court must be affirmed: First, because the question at issue is controlled by *Towne v. Eisner*, supra; secondly, because a re-examination of the question with the additional light thrown upon it by elaborate arguments, has confirmed the view that the underlying ground of that decision is sound, that it disposes of the question here presented, and that other fundamental considerations lead to the same result.

In *Towne v. Eisner*, the question was whether a stock dividend made in 1914 against surplus earned prior to January 1, 1913, was taxable against the stockholder under the Act of October 3, 1913 (38 Stat. 114, 166, c. 16), which provided (section B, p. 167) that net income should include 'dividends,' and also 'gains or profits and income derived from any source whatever.' Suit having been brought by a stockholder to recover the tax assessed against him by reason of the dividend, the District Court

sustained a demurrer to the complaint. [242 Fed. 702](#). The court treated the construction of the act as inseparable from the interpretation of the [Sixteenth Amendment](#); and, having referred to *Pollock v. Farmers' Loan & Trust Co.*, [\[1895\] USSC 159](#); [158 U. S. 601](#), [15 Sup. Ct. 912](#), [39 L. Ed. 1108](#), and quoted the Amendment, proceeded very properly to say ([242 Fed. 704](#)):

'It is manifest that the stock dividend in question cannot be reached by the Income Tax Act and could not, even though Congress expressly declared it to be taxable as income, unless it is in fact income.'

It declined, however, to accede to the contention that in *Gibbons v. Mahon*, [\[1890\] USSC 175](#); [136 U. S. 549](#), [10 Sup. Ct. 1057](#), [34 L. Ed. 525](#), 'stock dividends' had received a definition sufficiently clear to be controlling, treated the language of this court in that case as obiter dictum in respect of the matter then before it ([242 Fed. 706](#)), and examined the question as res nova, with the result stated. When the case came here, after overruling a motion to dismiss made by the government upon the ground that the only question involved was the construction of the statute and not its constitutionality, we dealt upon the merits with the question of construction only, but disposed of it upon consideration of the essential nature of a stock dividend disregarding the fact that the one in question was based upon surplus earnings that accrued before the [Sixteenth Amendment](#) took effect. Not only so, but we rejected the reasoning of the District Court, saying [\[1918\] USSC 6](#); ([245 U. S. 426](#), [38 Sup. Ct. 159](#), [62 L. Ed. 372](#), L. R. A. 1918D, 254):

'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 interest 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 the 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. * * * 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.'