the right of Congress thus to foist on the taxpayer an unjust definition of income. The validity of this provision was tested in the famous Eisner *vs*. Macomber case, decided by the Supreme Court, March 8, 1920. Hon. Charles E. Hughes, attorney for the defendant taxpayer said:

> "Undivided corporate profits are not income to the stockholder. It is the essence of income that it should be realized. Potentiality is not enough . . . . Income necessarily implies separation and realization. The increase of the forest is not income until it is cut. The increase in the value of lands due to growth and prosperity of the community is not income until it is realized . . . . This is sound doctrine both in law and in economics. Income of a corporation is not income of a shareholder until distributed. A 'stock dividend' is not income. It does not constitute a distribution of anything; it is a mere readjustment of capital."*

The opinion of the majority of the court was delivered by Justice Pitney, who said:

> "This (a stock dividend), however, is no more than a book adjustment, in essence not a dividend but rather the opposite; no part of the assets of the company is separated from the common fund, nothing distributed except paper certificates that evidence an antecedent increase in the value of the stockholder's capital interest resulting from an accumulation of profits by the company, but profits so far absorbed in the business as to render it impracticable to separate them for withdrawal and distribution. In order to make the adjustment, a charge is made against surplus account, with a corresponding credit to capital stock account, equal to the proposed "dividend"; the new stock is issued against this and the certificates delivered to the existing stockholders in proportion to their previous holdings . . . . . . We are clear that not only does a stock dividend really take nothing from the property of the corporation and add nothing to that of the shareholder, but that the antecedent accumulation of profits evidenced thereby, *while indicating that the shareholder is the richer because of an increase of his capital, at the same time shows he has not realized or received any income in the transaction.*" (The italics are mine.)

Obviously these decisions are entirely sound in economic theory, as far as they go. A stock dividend merely splits the previous ownership in two, the new certificates deriving their value from a reduction in value of the old.

But the Supreme Court's analysis leaves much to be desired. The perfectly correct result which it reached is all embodied in the statement that a stock dividend is not income *from the company*. But it may occasion income *to the recipient*, if the stock is sold† and the proceeds not reinvested but spent. Of

* Eisner *vs*. Macomber, 252 U. S. p. 198, quoted from Hewett, pp. 69-70.
† The law does take cognizance of stock sales but only taxes the profits, if any, thereon reckoned relatively to the original cost.