

applications of a similar kind, and thereby enforce those rigorous standards in this Court's judicial administration which alone will give us the freshness and vigor of thought and spirit that are indispensable for wise decisions in the causes committed to us.

MR. JUSTICE REED is of the opinion that this Court has jurisdiction to grant the writ requested, *Ex parte United States*, 287 U. S. 241, but concurs in this dissent on the ground that application for the writ sought should have been made first to the Circuit Court of Appeals.

HELVERING, COMMISSIONER OF INTERNAL
REVENUE, *v.* SPROUSE.*

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE
NINTH CIRCUIT.

No. 22. Argued November 10, 12, 1942.—Decided April 5, 1943.

1. Where a corporation having but two classes of stock, voting common and non-voting common, distributes to all the shareholders of both classes, in proportion to their respective holdings, a dividend of non-voting common, the fair market value of which is its par value, and which is backed by earnings and profits available for distribution in excess of its total value, neither the voting rights of the voting common nor its right to share in dividends or in liquidation being altered by the distribution, so that the relations previously existing between all the shareholders, or between the particular shareholder and the corporation, are in no wise disturbed by the distribution, the dividend is not subject to income tax. Const., Amendment XVI; Revenue Act of 1936, § 115 (f) (1). P. 606.
2. Where the sole owner of the common stock of a corporation which had common stock only, received a dividend of non-voting preferred stock authorized by a charter amendment and the value of which

*Together with No. 66, *Strassburger v. Commissioner of Internal Revenue*, on writ of certiorari, 316 U. S. 656, to the Circuit Court of Appeals for the Second Circuit.

was exceeded by earnings of the corporation available for dividends without changing the shareholder's interest in the corporation or in its net value, the dividend is not taxable income. Const., Amendment XVI; Revenue Act of 1936, § 115 (f) (1). P. 606.

No. 22, 122 F. 2d 973, affirmed.

No. 66, 124 F. 2d 315, reversed.

REVIEW by certiorari, 316 U. S. 656, of two judgments, the one reversing a ruling which sustained a deficiency assessment of income, 42 B. T. A. 484, and the other affirming the like ruling in another case.

Mr. Leo Brady for petitioner in No. 66.

Mr. Arnold Raum, with whom *Solicitor General Fahy*, *Assistant Attorney General Samuel O. Clark, Jr.*, and *Messrs. Sewall Key* and *Bernard Chertcoff* were on the brief, for the Commissioner of Internal Revenue.

Mr. Charles E. McCulloch for respondent in No. 22.

Messrs. Nathan Bilder, *Walter J. Bilder*, and *Erwin N. Griswold*, and *Mr. John E. Hughes* filed briefs as *amici curiae* in No. 66, urging reversal.

MR. JUSTICE ROBERTS delivered the opinion of the Court.

Certiorari was granted because the decisions below in the two cases conflict. They arise under § 115 (f) (1) of the Revenue Act of 1936:¹

"A distribution made by a corporation to its shareholders in its stock or in rights to acquire its stock shall not be treated as a dividend to the extent that it does not constitute income to the shareholder within the meaning of the Sixteenth Amendment to the Constitution."

¹ c. 690, 49 Stat. 1648, 1688.

No. 22

The respondent owned voting common stock in an Oregon corporation which paid a ten per cent stock dividend in shares of non-voting common stock. The company had outstanding but two classes of stock: voting common, of a par value of \$397,471.25; and non-voting common, of a par value of \$819,333.06. The dividend was of non-voting common of a par of \$121,680.43 and was distributed to holders of the voting and non-voting common. The fair market value of the stock distributed as a dividend was its par value, and the earnings or profits available for distribution were in excess of its total value. Neither the voting rights of the voting common, nor its right to share in dividends and in liquidation, was altered by the distribution.

The respondent, who owned no non-voting common, received 200 shares of that class of stock. In his return for 1936, he did not report the dividend as income. The Commissioner determined a deficiency by including the value of the dividend as income, and the Board of Tax Appeals sustained him.² The Circuit Court of Appeals reversed, holding that the dividend was not constitutionally the subject of income tax if it was distributed to holders of both classes of outstanding stock in proportion to their respective holdings. It accordingly remanded the case to the Board to find the facts and to apply the rule announced.³

No. 66

Petitioner owned 200 shares of common,—the entire stock of a corporation. By charter amendment the creation of an issue of 500 shares of 7% Cumulative Non-

² 42 B. T. A. 484.

³ 122 F. 2d 973.

Voting Preferred Stock, of \$100 par value, was authorized. The directors voted a distribution to stockholders of \$5,000 par of the preferred stock; and the petitioner, as sole stockholder, received fifty shares as a stock dividend. The earnings available for dividends were in excess of the value of this stock. Petitioner still holds the preferred stock and no dividends have been paid upon it. The petitioner failed to return the stock dividend as income, the respondent determined a deficiency, and the Board of Tax Appeals affirmed his action. The Circuit of Appeals affirmed the Board's decision.⁴

We think the judgment in No. 22 was right and that in No. 66 erroneous. The cases are ruled by *Helvering v. Griffiths*, ante, p. 371. While the petitioner in No. 66 received a dividend in preferred stock, the distribution brought about no change whatever in his interest in the corporation. Both before and after the event he owned exactly the same interest in the net value of the corporation as before. At both times he owned it all and retained all the incidents of ownership he had enjoyed before.

In No. 22, the respondent insists that the distribution of the dividend in nowise disturbed the relationship previously existing amongst all the stockholders, or that previously existing between the respondent and the corporation. The court below has held that, if this is true, the dividend did not constitute income.

We think *Koshland v. Helvering*, 298 U. S. 441, distinguishable. That was a case where there were both preferred and common stockholders, and where a dividend in common was paid on the preferred. We held, in the circumstances there disclosed, that the dividend was income, but we did not hold that any change whatsoever in the character of the shares issued as dividends resulted in

⁴ 124 F. 2d 315.

the receipt of income. On the contrary, the decision was that, to render the dividend taxable as income, there must be a change brought about by the issue of shares as a dividend whereby the proportional interest of the stockholder after the distribution was essentially different from his former interest.

No. 22 affirmed.

No. 66 reversed.

MR. JUSTICE RUTLEDGE took no part in the consideration or decision of these cases.

MR. JUSTICE REED, MR. JUSTICE FRANKFURTER, and MR. JUSTICE JACKSON dissent from each judgment. They are of opinion that *Koshland v. Helvering*, 298 U. S. 441, requires contrary conclusions.

FIDELITY ASSURANCE ASSOCIATION ET AL. v.
SIMS, AUDITOR OF THE STATE OF WEST
VIRGINIA, ET AL.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE
FOURTH CIRCUIT.

No. 319. Argued February 9, 10, 1943.—Decided April 5, 1943.

1. In the light of the character and history of the business of the insolvent corporation in this case, *held* that its petition for reorganization under Chapter X of the Bankruptcy Act should have been dismissed as not filed in "good faith" within the meaning of § 146 (3), (4), since it was unreasonable to expect that the company could be reorganized as a going concern, and since the interests of creditors would be best subserved in prior proceedings pending in state courts. Pp. 618, 619.
2. Chapter X of the Bankruptcy Act may not be availed of merely for the purpose of liquidation. P. 621.
129 F. 2d 442, affirmed.

CERTIORARI, 317 U. S. 614, to review the reversal of an order of the District Court, 42 F. Supp. 973, approving a