Corporate Dividends: When Taxable.—Rendered in conformity with the belief that all income "in the ordinary sense of the word" became taxable under the Sixteenth Amendment, the earliest decisions of the Court on the taxability of corporate dividends occasioned little comment. Emphasizing that in all such cases the stockholder is to be viewed as "a different entity from the corporation," the Court in *Lynch v. Hornby*,[16] held that a cash dividend equal to 24 percent of the par value of the outstanding stock and made possible largely by the conversion into money of assets earned prior to the adoption of the Amendment, was income taxable to the stockholder for the year in which he received it, notwithstanding that such an extraordinary payment might appear "to be a mere realization in possession of an inchoate and contingent interest . . . [of] the stockholder . . . in a surplus of corporate assets previously existing." In *Peabody v. Eisner*,[17] decided on the same day and deemed to have been controlled by the preceding case, the Court ruled that a dividend paid in the stock of another corporation, although representing earnings that had accrued before ratification of the Amendment, was also taxable to the shareholder as income. The dividend was likened to a distribution in specie.

Two years later, the Court decided *Eisner v. Macomber*,[18] and the controversy that that decision precipitated still endures. Departing from the interpretation placed upon the Sixteenth Amendment in the earlier cases, *i.e.*, that the purpose of the Amendment was to correct the "error" committed in *Pollock* and to restore income taxation to "the category of indirect taxation to which it inherently belonged,"[19] Justice Pitney, speaking for the Court in *Eisner*, indicated that the Sixteenth Amendment "did not extend the taxing power to new subjects, but merely removed the necessity which otherwise might exist for an apportionment among the States of taxes laid on income."[20] The decision gave the term "income" a restrictive meaning.

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[16] 247 U.S. 339, 344 (1918). On the other hand, in Lynch v. Turrish, 247 U.S. 221 (1918), the single and final dividend distributed upon liquidation of the entire assets of a corporation, although equaling twice the par value of the capital stock, was declared to represent only the intrinsic value of the latter earned prior to the effective date of the Amendment, and hence was not taxable as income to the shareholder in the year in which actually received. Similarly, in Southern Pacific Co. v. Lowe, 247 U.S. 330 (1918), dividends paid out of surplus accumulated before the effective date of the Amendment by a railway company whose entire capital stock was owned by another railway company and whose physical assets were leased to and used by the latter was declared to be a nontaxable bookkeeping transaction between virtually identical corporations.

[17] 247 U.S. 347 (1918).

[18] 252 U.S. 189 (1920).

[19] Stanton v. Baltic Mining Co., 240 U.S. 103, 112 (1916).

[20] 252 U.S. at 206.