

court was bound to look to the language employed and construe it in its natural and obvious sense, even though that was to give the words of the act an effect probably never contemplated by those who obtained the act and very probably not intended by the legislature which enacted it. *The King v. The Commissioners*, 5 A. & E. 804, 816. See also, *United States v. Lexington Mill Co.*, 232 U. S. 399; *Caminetti v. United States*, 242 U. S. 470, 485; *Russell Co. v. United States*, 261 U. S. 514, 519.

The enforcement of the statute according to its plain terms results in no absurdity or injustice, for, as this Court recently said, in holding the United States liable for damages including interest in a collision case where the Government had come into court to assert a claim on its own behalf: "The absence of legal liability in a case where but for its sovereignty it would be liable does not destroy the justice of the claim against it." *United States v. The Thekla*, 266 U. S. 328, 340.

To refuse interest in this case, in my opinion, is completely to change the clear meaning of the words employed by Congress by invoking the aid of extrinsic circumstances to import into the statute an ambiguity which otherwise does not exist and thereby to set at naught the prior decisions of this Court and long established canons of statutory construction.

MR. JUSTICE BUTLER, MR. JUSTICE SANFORD and MR. JUSTICE STONE concur in this opinion.

UNITED STATES *v.* CAMBRIDGE LOAN AND
BUILDING COMPANY.

CERTIORARI TO THE COURT OF CLAIMS.

No. 46. Argued October 23, 24, 1928.—Decided November 19, 1928.

1. A corporation which by the law of its State is a building and loan association, and the business of which is conducted in accordance with that law, is a "building and loan association" within the

- meaning of sections 231 of the Revenue Acts of 1918 and 1921, granting exemption from income tax, if its operations be not so related to mere money-making as to constitute a gross abuse of the name. P. 57.
2. The activities of the respondent in the way of receiving deposits on interest and making loans to persons not among its members (borrowers being required since the Act of 1921, *supra*, to purchase from one to five shares of its stock) did not disqualify it for the tax exemption. *Id.*
3. The Act of 1921, *supra*, in confining the exemption to building and loan associations "substantially all of the business of which is confined to making loans to members," did not limit loans to the amount of shares subscribed for. P. 59.
4. An Act directing that certain taxes be refunded as "illegally collected" is an interpretation of the prior Act under which they were exacted and by implication approves decisions of the federal courts holding the exaction unwarranted. P. 58.
- 61 Ct. Cls. 631, affirmed.

CERTIORARI, 276 U. S. 614, to a judgment allowing recovery on a claim for money paid under duress as income taxes.

Mr. T. H. Lewis, Jr., Attorney, Bureau of Internal Revenue with whom *Solicitor General Mitchell* and *Assistant Attorney General Galloway* were on the brief, for the United States.

Mr. L. L. Hamby for respondent.

Messrs. Cleaveland R. Cross and *Herbert W. Nauts* filed a brief as *amici curiae* by special leave of Court.

MR. JUSTICE HOLMES delivered the opinion of the Court.

This is a suit brought by the respondent to recover the amount of taxes for the years 1918 through 1923, paid under duress, from which it says that it was exempt by the Acts under which the taxes were levied. It recovered

in the Court of Claims and a writ of certiorari was granted by this Court, April 9, 1928.

The respondent is incorporated under the laws of Ohio, by which it is recognized as a building and loan association, and it has conducted its business in accordance with the laws of that State. The Revenue Act of 1918, February 24, 1919, c. 18, § 231, 40 Stat. 1057, 1076, exempts from the taxes in question "(4) Domestic building and loan associations and cooperative banks without capital stock organized and operated for mutual purposes and without profit." The Act of November 23, 1921, c. 136, § 231, 42 Stat. 227, 253, exempts "(4) Domestic building and loan associations substantially all the business of which is confined to making loans to members; and cooperative banks without capital stock organized and operated for mutual purposes and without profit." These are the statutes concerned. No definition is given of building and loan associations, and the question is what scope is to be given to the words.

The rudimentary form of such associations is supposed to be a society raising by subscription of its members a fund for making advances to members in order to enable them to build or buy houses of their own. A member is entitled to borrow on sufficient security an amount equal to his subscription for shares and when the shares are paid up by the instalment payments required and the profits of the company his indebtedness is cancelled. The Government argues that the essence of these societies, what gives them their quasi public character and the only thing that warrants exempting them from taxes, is that their single purpose is to enable people to get homes of their own. When one of them yields to the temptation to enlarge its operations and to make a little money outside, the Government says, it loses its title to its distinctive name and to the exemption that the statute gives. The respondent received a large proportion of

deposits from persons who were not members and it paid interest upon the same, and it also made considerable loans to such persons until the passage of the Act of 1921. Even when the borrower was a stockholder he was required only to subscribe for from one to five shares regardless of the amount of the loan. It is argued that thus the society became a mere money-making institution like an ordinary bank.

But for such an association to start it must have some money to lend, and the typical member does not have it. Long before Congress dealt with loan and building associations, an esteemed writer upon the subject had insisted on the reasonableness of allowing them to issue full paid stock with fixed dividends, both in his book and upon the bench. Endlich, *Building Associations*, 2d. ed. (1895), § 462. *Folk v. Capital Savings & Loan Ass'n*, 214 Penn. 529, 534, 544 (1906). The same author recognized depositors, § 56, and with more or less qualification the right to lend to outsiders, §§ 314, *et seq.*, and to borrow §§ 297, *et seq.* Under the Ohio statute the respondent has these powers, and still, as we have said, is called a building and loan association by that State. The same name was commonly used in other States and similar powers were given with more or less restriction. When Congress exempted such associations from the income tax of course it was speaking of existing societies that commonly were known as such, not of ideals that would have been hard to find. And this is not left to inference alone. Some corporations having been taxed under the Act of August 5, 1909, c. 6, § 38; 36 Stat. 11, 12, which exempted 'domestic building and loan associations organized exclusively for the mutual benefit of their members,' the Act of February 26, 1917, c. 129; 39 Stat. 1491, 1493, directed the tax to be refunded as 'illegally collected' and included the respondent among the corporations named. This Act followed and by implication sanctioned decisions to similar

effect in *Herold v. Park View Building & Loan Ass'n*, 210 Fed. 577 (203 Fed. 876); *Central Building, Loan & Savings Co. v. Bowland*, 216 Fed. 526.

This interpretation was adhered to for the Act of 1909 and succeeding Acts, including that of 1918 now before us, until a few months before the Act of 1921. It was incorporated in Regulations of the Commissioner of Internal Revenue approved by the Secretary of the Treasury as late as January 28, 1921, and up to then no taxes had been levied or paid. In June of that year, however, the Regulations were modified so as to declare the societies taxable if the amounts borrowed from and lent to non-members were out of proportion to the borrowing needs of the members, and otherwise to limit the use of such societies as a mask to escape taxation. The present taxes are upheld by the Government on the ground that the respondent is such a mask. It is argued that even admitting all that has been said thus far, a State cannot make a bank exempt merely by calling it a building and loan association. No doubt extravagant cases might be imagined. But these associations are well known and a State is not likely to be party to a scheme to enable a private company to avoid federal taxation by giving it a false name. The statutes speak of 'domestic' associations, that is, associations sanctioned by the several States. They must be taken to accept, with the qualifications expressly stated, what the States are content to recognize, unless there is a gross misuse of the name. The State of Ohio has recognized and still recognizes the respondent as belonging to the class which its name indicates. Very possibly the company has strained its privileges to near the limit, but we are not prepared to condemn the nomenclature adopted by the State. When the Act of 1921 was passed and added the words 'substantially all the business of which is confined to making loans to members,' the respondent conformed to the

statute, by requiring membership as a condition to a loan. The statute did not limit loans to the amount of stock subscribed for. We may add that the net dividends are distributed to members at an equal rate to all.

We deem it plain that no taxes were warranted before the Act of 1921, and are of opinion that the taxes under that also were not justified, although as we have said the rights of the company were pressed somewhat far. In coming to this result we have not thought it necessary to go into details of disputed significance, thinking it enough to state the point of view from which we regard the case.

The assessment was not made until September 18, 1924, up to which time the respondent not unreasonably had supposed itself exempt, and then was taxed retrospectively for the five years before the one then current. In the meantime the respondent has distributed its money in dividends to its members and they presumably have paid income taxes on the dividends received. The statute of limitations had run or was running against them when the Government at the last moment filed a motion to remand that would have delayed the case and would have given the statute a further chance to run. The facts alleged in the motion sufficiently appear in the findings of the Court of Claims and so far as material have been assumed in the discussion of the case.

Judgment affirmed.

UNITED STATES *v.* LENSON.

CERTIORARI TO THE COURT OF CLAIMS.

No. 48. Argued October 24, 1928.—Decided November 19, 1928.

Under the Act of June 10, 1922, a lieutenant of the Staff Corps of the Navy, who has served for fifteen years as enlisted man, warrant officer and commissioned officer, and whose first appointment to