

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

the permanent service was as a lieutenant, junior grade, of the Staff Corps, corresponding to a first lieutenant in the Army, is not entitled to pay of the fourth period if his total commissioned service does not equal that of a lieutenant commander of the line of the Navy drawing the pay of that period. P. 62.

63 Ct. Cls. 420, reversed.

CERTIORARI, 276 U. S. 612, to a judgment of the Court of Claims allowing a claim for pay presented by a lieutenant in the Navy.

Solicitor General Mitchell, with whom *Assistant Attorney General Galloway* was on the brief, for the United States.

Mr. George A. King, with whom *Messrs. Wm. B. King* and *George R. Shields* were on the brief, for respondent.

MR. JUSTICE HOLMES delivered the opinion of the Court.

This is a claim by a lieutenant of the Staff Corps of the Navy, under the Act of June 10, 1922, c. 212, 42 Stat. 625, (Code, Title 37, §§ 1, 4,) which went into effect on July 1, 1922, that by § 1 of that Act he is entitled to pay of the fourth period there mentioned from the date of the Act to April 23, 1924, amounting to \$1,935.89. On the last date he had served seventeen years, as enlisted man and officer, and since then has received fourth period pay. The Court of Claims gave the claimant judgment for the sum named. A writ of certiorari was granted by this Court, 276 U. S. 612.

As stated by his counsel the claimant had been in continuous service for over fifteen years when the Act took effect, about eleven years as enlisted man, six months as a warrant officer and three and a half years as commissioned officer. His first appointment in the permanent service in the Navy was as a lieutenant, junior grade, of the Staff Corps, corresponding to a first lieutenant in the

Army. The pay of the fourth period, \$3,000, is given "to lieutenants of the Staff Corps of the Navy, and lieutenants and lieutenants (junior grade) of the line and Engineer Corps of the Coast Guard whose total commissioned service equals that of lieutenant commanders of the line of the Navy drawing the pay of this period." The absence of a comma after 'Coast Guard' is laid hold of to show that the qualification as to commissioned service applies only to the last clause and not to lieutenants of the Staff Corps of the Navy, but no intelligible reason is given for limiting it in that way. The length of commissioned service seems in reason as proper a consideration in determining the pay of one class as of the other. If then the claimant's total commissioned service must have equaled that of lieutenant commanders of the Navy drawing fourth period pay, we are of opinion that his claim must fail.

The pay of the fourth period is given by the same section to lieutenant commanders of the Navy, "who have completed fourteen years' service, or whose first appointment in the permanent service was in a grade above that corresponding to second lieutenant in the Army." The claimant points out that his first appointment corresponded, as we have said, to that of a first lieutenant in the Army. But the requirement is that his commissioned service should equal that of lieutenant commanders. If this could be satisfied by any service less than the fourteen years, the alternative would be that of a lieutenant commander drawing fourth period pay whose total service was not more than what the claimant can show.

It is argued that by the Act of March 3, 1883, c. 97, 22 Stat. 473, (Code, Title 34, § 231,) all service of the officer was put on the footing of commissioned service, and that by this same § 1 of the Act of 1922 now before us, "For officers in the service on June 30, 1922, there shall be included in the computation all service which is now counted

in computing longevity pay." But when Congress with all this before it, specified commissioned service we must take it to have meant commissioned service and not something else that for other purposes was just as good.

The same paragraph of the same section gives pay of the fourth period to lieutenants of the Navy 'who have completed seventeen years' service.' Under that provision the claimant's service as an enlisted man is counted and he now gets the pay. But this brings out the contrast embodied in the words between service and commissioned service. Assuming that lieutenant commanders could make out their fourteen years by counting service rendered before they received commissions, still it is the commissioned service of the claimants that must equal that of the lieutenant commanders, and we repeat the claimant shows no case of a lieutenant commander whose service or even whose commissioned service was not more than about three years and a half. The statute is not very clear, but we are of opinion that the Government is right in denying the claim.

Judgment reversed.

NEW YORK EX REL. BRYANT *v.* ZIMMERMAN ET AL.

ERROR TO THE SUPREME COURT OF NEW YORK.

No. 2. Submitted October 11, 1927.—Decided November 19, 1928.

1. Jurisdiction of this Court over an appellate case can not be established by consent or acquiescence of parties. P. 66.
2. The validity of a state statute may be drawn in question under § 237a of the Judicial Code, on the ground of its being repugnant to the Federal Constitution, without the use of any particular form of words. If the record as a whole shows, either expressly or by clear intendment, that this claim of invalidity and ground therefor were brought to the attention of the state court with fair precision and in due time, the claim is to be regarded as having been adequately presented. P. 67.