STATUTORY INTERPRETATION—SUBSTITUTION OF WORDS.—A statute was passed by the Florida legislature authorizing the Board of County Commissioners to issue and sell bonds for building roads. The bonds were to bear interest at 6 per cent. per annum, payable semi-annually and should "mature not more than thirty days after date at such time or times as said board may determine by resolution." Bonds were issued by virtue of this statute, but were to mature within thirty years despite the wording of the act. The obvious intent of the legislators was that thirty years should be the period of time instead of thirty days. *Held,* that the word "years" could not be substituted for the word "days" in order to validate the bonds. *Osborne et al. v. Simpson,* 114 So. 543 (Fla., 1928).

This case involves the old question as to the extent of a court's power in interpreting legislative enactments. Here the Florida court refused to strike out a word of plain, definite meaning and substitute therefor a different word to make it conform to what seemed to the court to be the intent of the legislature. This same view was expressed in *Fine v. Moran,* 74 Fla. 417, 77 So. 533, which the principal case follows. The prevailing rule seems to be that courts are bound to follow the plain words of a statute as to which there is no room for construction, regardless of consequences. *Commissioners of Immigration v. Gottlieb,* 265 U. S. 310, 68 L. Ed. 1031, 44 Sup. Ct. 528; *Dusold v. U. S.,* 270 Fed. 574. Yet in *Dorsey Land and Lumber Co. v. Board of Directors of Garland Levee Dist.,* 136 Ark. 524, 203 S. W. 33, affirmed 249 U. S. 618, the court construed the number 20 as number 29 in a statutory description of land, since 29 was the only section answering the description. This indicates a much more liberal view than that expressed in the principal case. The Arkansas courts seem to hold that where there is an obvious error it is the court's duty to discard the error and accept the obvious meaning of the framers of the statute. It is contended that this is not reading into the statute something which is not there and that it does not constitute judicial usurpation for the court to correct mistakes of the legislature. The Arkansas courts proceed on the theory that mere interpretation of the language used by the legislators so as to ascertain the true intention, without reading anything into it except that which was obviously meant, does not amount to judicial legislation. *Bowman v. State,* 93 Ark. 168, 129 S. W. 80.

From the two lines of argument pursued in these conflicting cases, the decisive factor would appear to depend upon just what constitutes objectionable judicial legislation. As to just what constitutes objectionable judicial legislation the courts are not in accord. Much will depend upon whether the court is inclined to follow the strict, logical application of *Osborne v. Simpson* or the liberal and more practical rule adopted in *Dorsey Land and Lumber Co. v. Board of Directors of Garland Levee Dist.* While logic and the trend of present authorities support the rule laid down in the principal case, the results of a more liberal rule in effecting the true intent of the legislature call in question the soundness of the prevailing rule. However, in spite of the hardship caused at times by the refusal of the courts to read into statutes words that are not there or to strike out words which fail to express the legislative intent, sound public policy supports the holding in *Osborne v. Simpson* in leaving the legislature responsible for its own errors and in not thrusting upon the court the task of wording statutes so as to express the intent of the legislature. On principle it is submitted that when the words used are plain and unambiguous, the court should accept them without question, insofar as no need for interpretation exists.

E. T. C., '28.

TAXES—INTEREST ON GOVERNMENT BONDS.—Suit by insurance company to recover excess taxes for five years. The taxes were exacted under 76.34 Wisconsin Statutes 1923 which required domestic companies to pay 3 per cent of

gross income as a license fee for transacting insurance business in the state. *Held,* that the tax is invalid because it affects the receipt of interest on United States bond. *Northwestern Mutual Life Ins. Co. v. State of Wisconsin,* 72 L. Ed. 65, 48 Sup. Ct. 55 (1928).

It cannot be denied that bonds of the United States are beyond the taxing power of the state. *McCulloch v. Maryland,* 4 Wheat. 316, 4 L. Ed. 579; *First National Bank v. Anderson,* 269 U. S. 341, 70 L. Ed. 301, 46 Sup. Ct. 135. However, a few courts, conceding the soundness of the above proposition, have reached results contrary to that of the principal case. In *Hager v. American Nat. Bank,* 159 F. 396, 86 C. C. A. 334 (U. S. C. C. A. Ky.), it was held that although the value of the shares of a national bank includes the value due to non-taxable United States bonds owned by the bank, there is no objection to the validity of an assessment of such shares for taxation by a state without excluding the value of the bonds. And the case of *First Nat. Bank v. Board of Equalization of Ind. County,* 92 Ark. 335, 122 S. W. 988, is authority for the proposition that a state may tax shares of stock in a national bank at their actual value, without regard to the fact that a part or the whole of the capital stock of the bank is invested in non-taxable bonds, as taxation of the shares is not taxation of the non-taxable bonds.

But the trend and weight of modern authority is in line with the principal case. *Home State Bank v. City of Des Moines,* 205 U. S. 503, 51 L. Ed. 901, 27 Sup. Ct. 571, held that the immunity of national securities from state taxation is violated by a tax imposed under an Iowa act directing that shares of stock of state banks shall be assessed to such banks and not to individual stockholders, the substantial effect of which was to require taxation upon the property, not including the franchises of such banks, and to adopt the value of the shares as the measure of the taxable valuation of such property, without permitting any deduction from such valuation on account of bonds of the United States owned by the bank.

A tax upon income from property or business is a tax upon the property or business from which the income is derived; and if the property or business is outside the taxing power, the income therefrom is equally beyond reach of that power. *Pollock v. Farmer's Loan and Trust Co.,* 157 U. S. 429, 39 L. Ed. 759, 15 Sup. Ct. 673; *Weston v. Charleston,* 2 Pet. 449, 465, 7 L. Ed. 481. The Supreme Court, speaking through Mr. Justice Holmes, in *Gillespie v. State of Oklahoma,* 257 U. S. 501, 505, 66 L. Ed. 338, 340, 42 Sup. Ct. 171, held: "In cases where the principal is absolutely immune from interference, an inquiry is allowed into the sources from which net income is derived, and if a part of it comes from such a source, the tax is *pro tanto* void." In reaching this conclusion the court relied on *Indian Territory Illuminating Oil Co. v. Oklahoma,* 240 U. S. 522, 60 L. Ed. 779, 36 Sup. Ct. 453; *W. E. Peck & Co. v. Lowe,* 247 U. S. 163, 62 L. Ed. 1049, 38 Sup. Ct. 432; and *Evans v. Gore,* 253 U. S. 245, 64 L. Ed. 887, 40 Sup. Ct. 550.

A. E. M., '29.