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Statutes: The Silence of Congress

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STATUTES: THE SILENCE OF CONGRESS

United States v. South Buffalo Ry., 68 Sup. Ct. 868 (1948)

The Government sued for a perpetual injunction against the South Buffalo Railway Company, the Bethlehem Steel Company, an affiliated subsidiary, and the Bethlehem Steel Corporation, the holding company. This suit, based upon the commodities clause of the Interstate Commerce Act,[1] which prohibits railroads from transporting any article or commodity, with certain exceptions, in which it may have an interest, was an attempt to restrain the railroad from transporting commodities produced by the subsidiary or holding company of the railroad. In *United States v. Elgin, Joliet and Eastern Ry. Co.*,[2] the Court permitted a railroad to carry goods of a company although both the railroad and the company were subsidiaries of a holding company owning all of the railroad stock. In 1939, in an effort to nullify the effect of the *Elgin* case, an amendment to the commodities clause was introduced in the Senate, but it was not adopted.

On direct appeal,[3] the Government's contention being that the *Elgin* case should not be followed, HELD, that, irrespective of the correctness of the Court's former construction of the commodities clause, when Congress has failed to adopt a proposed amendment calculated to nullify that construction, the former ruling prevails. Judgment affirmed, Justices Rutledge, Black, Douglas, and Murphy dissenting.

A conclusive presumption of legislative adoption of previous judicial[4] and administrative[5] constructions of a statute generally arises from reenactment of the statute without any substantial change, from the rejection of proposed amendments to the statute and from legislative silence concerning past constructions of a statute,[6] so as to bar the Court from overruling its prior decisions. This presumption, however, is not con-

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[1]34 STAT. 585 (1906), 49 U. S. C. §1(8) (1940).

[2]298 U. S. 492, 56 Sup. Ct. 841, 80 L. Ed. 1300 (1936).

[3]32 STAT. 823 (1903), 49 U. S. C. §45 (1940).

[4]United States v. Ryan, 284 U. S. 167, 52 Sup. Ct. 65, 76 L. Ed. 224 (1931); Bruce v. Tobin, 254 U. S. 18, 38 Sup. Ct. 7, 62 L. Ed. 123 (1917); Savings Bank v. United States, 19 Wall. 227, 22 L. Ed. 80 (U. S. 1873); Depfer v. Walker, 125 Fla. 189, 169 So. 660 (1936); CRAWFORD, CONSTRUCTION OF STATUTES §233 (1940); 2 SUTHERLAND, STATUTES AND STATUTORY CONSTRUCTION §15109 (3d ed. 1943).

[5]Brown, *Regulations, Reenactment, and the Revenue Act*, 54 HARV. L. REV. 377 (1941); Griswold, *A Summary of the Regulation Problem*, 54 HARV. L. REV. 398 (1941).

[6]Note, 59 HARV. L. REV. 1277 (1946).

clusive under all circumstances, and some decisions have considered it merely as an aid to statutory construction[7] and only one of the factors to determine the meaning of the language.[8] In *Girouard v. United States*,[9] the Court took the position that reenactment, in and of itself, does not give rise to a presumption of legislative ratification of judicial constructions of the subject statute, but that, in addition, there must be very persuasive evidence of legislative adoption of those prior constructions before the Court will be barred from overruling a former decision.[10] The principal decision,[11] however, adheres to the traditional rule, which considers the presumption as conclusive.[12]

The proposed amendment to the commodities clause purported to include within the prohibition of the clause not only subsidiaries and affiliates of a carrier but also all legal persons that in fact are controlling the carrier, the purpose of the amendment being to set aside the effect of the *Elgin* decision and to recognize the carrier as a mere alter ego[13] of the holding company. The proposal, instead of applying to railroads alone, however, would have applied to all carriers other than those transporting by air. The Senate committee rejected the rewritten clause as "too drastic," but did not indicate whether their disapproval was based at least in part on the extension to all carriers or solely on that portion concerning carriers' affiliates.

The Court was apparently unanimous in indicating that the statute originally had been misconstrued,[14] but it divided on the interpretation of the subsequent legislative history.[15] The majority understood the debates in the Senate committee and the refusal to adopt the amendment

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[7]Toucey v. New York Life Ins. Co., 314 U. S. 118, 62 Sup. Ct. 139, 86 L. Ed. 100 (1941); Helvering v. Reynolds, 313 U. S. 428, 61 Sup. Ct. 971, 85 L. Ed. 409 (1941); Helvering v. Hallock, 309 U. S. 106, 60 Sup. Ct. 444, 84 L. Ed. 604 (1940).

[8]F. C. C. v. Columbia Broadcasting System, 311 U. S. 132, 61 Sup. Ct. 152, 85 L. Ed. 87 (1940).

[9]328 U. S. 61, 66 Sup. Ct. 826, 90 L. Ed. 1084 (1946); Horack, *Congressional Silence—a Tool of Judicial Supremacy*, 25 TEX. L. REV. 247 (1947).

[10]*See* Cleveland v. United States, 329 U. S. 14, 21, 67 Sup. Ct. 13, 16, 91 L. Ed. 12, 18 (1946) (concurring opinion).

[11]United States v. South Buffalo Ry., 68 Sup. Ct. 868 (1948).

[12]Cases cited note 6 *supra*.

[13]WORMSER, *Piercing the Veil of Corporate Entity* in THE DISREGARD OF THE CORPORATE FICTION AND ALLIED CORPORATE PROBLEMS 42 (1927).

[14]*See* United States v. South Buffalo Ry., 68 Sup. Ct. 868, 870 (1948).

[15]*Hearings before Senate Committee on Interstate Commerce on S. 2009*, 76th Cong., 1st Sess. 427 (1946).