

While the Statute at Large was cited, the U.S. Code was also included – “42 U.S.C., c. 7 (Supp.).” This case was the turning point of our judicial system, at least in regards to criminal matters. The decision was perhaps by the narrowest margin ever. The Chief Justice Charles E. Hughes had been against the New Deal legislation of Roosevelt and his socialists friends. But when Roosevelt came out with his outlandish antics to “pack the court” with his cronies, the act became an embarrassment to the court and to Hughes. Even though Hughes let it be known he was against the Social Security Act, he withheld making a definite vote. The vote was 4 to 4 on the matter. But the Jewish justice, Cardozo, took hold of the case and claimed the Act was constitutional. Chief Justice Hughes apparently did not say anything, probably to avoid further embarrassment.

Technically, the Social Security Act was held by the majority of the Supreme Court to be unconstitutional, or at most was a 4 to 4 tie. But nonetheless this decision paved the way for more socialistic legislation, and on all indictments charging a violation of these laws appeared the U.S. Code, not the Statutes at Large. By the 1940s, the Code effectively replaced the Statutes at Large in all criminal proceedings and indictments.

The Nature and Status of the U.S. Code

With the U.S. Code, the laws of the Statutes at Large were not only “revised” in content, but in form and style. When incorporated into the U.S. Code all titles and enacting clauses were removed, making the nature of the laws and their source of authority unknown.

Laws within the Statutes at Large were identified as being either public or private laws.

Acts which were laws, resolutions, or proclamations were so designated by their identifying enacting clauses and titles. But no one can tell the nature of the “laws” in the U.S. Code.

When the U.S. Code was first published, it never was stated to be the official laws of the United States. Rather, it was stated that the Code was a “restatement” of law; or was only “prima facie evidence of the laws of the United States.”¹¹ On this matter one Court stated:

The United States Code was not enacted as a statute, nor can it be construed as such. It is only a prima facie statement of the statute law. * * * If construction is necessary, recourse must be had to the original statutes themselves.¹²

This tells us that the United States Code, as originally established, was not on an equal plain with the “original statutes” or the Statutes at Large. The evidence of a thing is not the thing itself. Thus the Code was not true law.

With the start of regular use of the U.S. Code, numerous problems arose in that it contained mistakes, errors and inconsistencies as compared to the Statutes at Large. Thus in 1947, Congress enacted several of the Titles into “positive law,” such as the act: “To codify and enacted into positive law, Title 1 of the United States Code.” In doing so they devised some new terminology:

United States Code.— The matter set forth in the edition of the Code of Laws of the United States current at any time shall, together with the then current supplement, if any, establish prima facie the laws of the United States, general and permanent in their nature, in force on the day preceding the commencement of the session following the last session the legislation of which is included: *Provided, however,* That whenever titles of such Code shall have been enacted into positive law the text thereof shall be

11 *Five Flags Pipe Line Co. v. Dept. of Transportation*, 854 F.2d 1438, 1440 (1988); *Stephan v. United States*, 319 U.S. 415, 426 (1943); 44 Statutes at Large, Part 1, preface.

12 *Murrell v. Western Union Tel. Co.*, 160 F.2d 787, 788 (1947); also, *United States v. Mercur Corporation*, 83 F.2d 178, 180 (1936).