

of the statute here under consideration, in so far as it requires that there shall be included in the gross estate the value of property transferred by a decedent prior to its passage merely because the conveyance was intended to take effect in possession or enjoyment at or after his death, is arbitrary, capricious and amounts to confiscation. Whether or how far the challenged provision is valid in respect of transfers made subsequent to the enactment, we need not now consider.

The judgment of the court below is

*Affirmed.*

MR. JUSTICE HOLMES, MR. JUSTICE BRANDEIS, MR. JUSTICE SANFORD, and MR. JUSTICE STONE concur in the result.

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FEDERAL TRADE COMMISSION v. AMERICAN TOBACCO COMPANY.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

No. 279. Argued April 19, 20, 1927.—Decided May 31, 1927.

A judgment of the Circuit Court of Appeals which turns on a matter of fact of no general importance, depending on an appreciation of circumstances admitting of different interpretations, will not be revised by certiorari. P. 544.

9 F. (2d) 570, affirmed.

CERTIORARI (270 U. S. 638) to a judgment of the Circuit Court of Appeals which set aside an order of the Federal Trade Commission.

*Mr. Adrien F. Busick*, with whom *Solicitor General Mitchell*, and *Messrs. Bayard T. Hainer* and *Edward L. Smith* were on the brief, for petitioner.

*Mr. Edward S. Rogers*, with whom *Mr. Jonathan H. Holmes* was on the brief, for respondent.

MR. JUSTICE McREYNOLDS delivered the opinion of the Court.

The statement of the petition for certiorari that the judgment and opinion below might seriously hinder future administration of the law was grave and sufficiently probable to justify issuance of the writ.

Proper decision of the controversy depends upon a question of fact. Did the American Tobacco Company become party to the unlawful combination of tobacco jobbers at Philadelphia to maintain prices? After considering much evidence the Commission gave affirmative answer to that query; but the Circuit Court of Appeals thought there was nothing to support their view. 9 Fed. (2d) 570.

It now appears to us that this matter of fact is of no general importance. Accordingly, we adhere to the usual rule of non-interference where conclusions of Circuit Courts of Appeals depend on appreciation of circumstances which admit of different interpretations. And upon that ground alone we affirm the judgment below.

The opinion of the Circuit Court of Appeals is of uncertain intendment and is not satisfactory as an exposition of the law. What this Court has said in many opinions indicates clearly enough the general purpose of the statute and the necessity of applying it with strict regard thereto.

*Affirmed.*

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JOINES *v.* PATTERSON ET AL.

CERTIORARI TO THE SUPREME COURT OF THE STATE OF  
OKLAHOMA.

No. 298. Argued April 26, 1927.—Decided May 31, 1927.

1. Conclusions of a state supreme court based upon questions of federal law wrongly determined, and acted upon, require a reversal of the judgment and remand of the cause for further proceedings. P. 548.