Louisiana Law Review

Volume 17 | Number 4
June 1957

Administrative Law - Scope of Judicial Review - Substitution of Judgment

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NOTES

ADMINISTRATIVE LAW — SCOPE OF JUDICIAL REVIEW — SUBSTITUTION OF JUDGMENT

Plaintiff taxpayer built a large number of housing units which were rented and later sold over a five-year period by the taxpayer's staff. These undisputed facts were the basis of the Tax Court's finding that the property was held "primarily for sale to customers . . . in the ordinary course of business" and therefore not within the capital gains provisions. On appeal, the court of appeals held, *reversed.*[1] The finding of the Tax Court was an ultimate fact conclusion, which is but a legal inference from the facts and therefore subject to review free of the restraining impact of the "clearly erroneous" rule. The court of appeals then freely substituted judgment on the issue. *Curtiss v. Commissioner*, 232 F.2d 167 (3d Cir. 1956).

The distinction between law and fact is the overt basis of the rules governing the scope of judicial review of administrative findings. Review is limited as to fact findings and unrestricted as to legal questions. The "substantial evidence" and "rational basis" rules generally govern the scope of review. The "substantial evidence" rule is applied in reviewing fact conclusions reached by an agency in the exercise of its adjudicative function.[2] Under this rule, the court will not substitute its judgment for that of the agency on factual conclusions or inferences which are supported by evidence which a reasonable person could consider adequate,[3] although other reasonable inferences could be drawn from the evidence.[4] The "rational basis" criteria is applied in reviewing agency conclusions of a rule-making na-

1. On a subsidiary issue (whether certain lands were held for sale in the ordinary course of business) the court affirmed the finding of the Tax Court against the taxpayer. A dissent did not disagree with the consideration of ultimate fact as a legal question, but was based on the argument that statutory provisions granting special tax exemptions should be construed narrowly.

2. NLRB v. Nevada Consol. Copper Corp., 316 U.S. 105 (1942). But the rule has also been employed where an inference was primarily in the nature of a statutory construction. O'Leary v. Brown-Pacific-Maxon, 340 U.S. 504 (1951). The rule is intended to be applied to findings which are based primarily if not completely on evidentiary considerations. It is interesting to note that the same "substantial evidence" language is used in reviewing jury findings. See *Notes to Rules of Civil Procedure*, 8A FED. CODE ANN. 402 (1947).

3. Consolidated Edison Co. v. NLRB, 305 U.S. 197, 229 (1938).

4. NLRB v. Nevada Consol. Copper Corp., 316 U.S. 105 (1942).

ture.[5] In such a case, the court will only look to see if the agency finding has a "reasonable basis in law" and "warrant in the record,"[6] i.e., whether the specification of a rule is pursuant to the statutory principle and delegated legislative authority. The scope of review as to Tax Court findings is unique in the field of administrative law in that neither the "substantial evidence" nor the "rational basis" tests have any applicability. A broader[7] review is allowed under the rule that the courts may not disturb findings of fact unless "clearly erroneous,"[8] i.e., unless, on the entire evidence, the court is left with the definite and firm conviction a mistake has been made.[9]

Originally, decisions of the old Board of Tax Appeals were considered to be only guides to the courts.[10] But in the *Dobson* case,[11] decided in 1943, the Supreme Court stated that review of tax decisions had been too broad, and laid down a new rule for reviewing findings of the board. Judicial substitution of judgment was precluded where a rational basis in law or warrant in the record could be found. Unless the courts could find a clear mistake of law, the Board of Tax Appeals decision was to be left undisturbed.[12] The case involved what was in effect rule making by statutory interpretation, since the finding prescribed a method of accounting to be used in computing certain tax deductions, and therefore the rational basis criterion was seemingly to be expected.

However, dissatisfaction with the *Dobson* rule resulted in a 1948 amendment to the Internal Revenue Code,[13] which provided that decisions of the Tax Court should be reviewed in the same manner and to the same extent as decisions of a district court in cases tried without a jury. In thus subjecting Tax Court decisions to the "clearly erroneous" rule, Congress clearly intended that Tax Court findings should not be afforded the same degree

5. SEC v. Chenery Corp., 332 U.S. 194 (1947); NLRB v. Hearst Publications, 322 U.S. 111 (1944); Gray v. Powell, 314 U.S. 402 (1941); Rochester Tel. Corp. v. United States, 307 U.S. 125 (1939).

6. NLRB v. Hearst Publications, 322 U.S. 111, 131 (1944).

7. The "clearly erroneous" rule allows the appellate court to draw inferences different from those of the court below, even though the lower court's finding may have been reasonable. See DAVIS, ADMINISTRATIVE LAW 914-15 (1951).

8. INT. REV. CODE OF 1954, § 1141(a); FED. R. CIV. P. 52(a).

9. United States v. United States Gypsum Co., 333 U.S. 364 (1948).

10. DAVIS, ADMINISTRATIVE LAW 879 (1951).

11. Dobson v. Commissioner, 320 U.S. 489 (1943).

12. *Id.* at 502; Paul, *Dobson v. Commissioner: The Strange Ways of Law and Fact*, 57 HARV. L. REV. 753, 840 (1944).

13. 62 STAT. 991 (1948); INT. REV. CODE OF 1954, § 1141(a).

of finality as those of other administrative agencies.[14] Congress thought that application of the "clearly erroneous" rule would eliminate much of the confusion generated by the *Dobson* doctrine,[15] but application of the rule has varied tremendously in cases that are almost identical.[16] Its application is determined by the law-fact distinction, but a precise definition of where fact ends and law begins is not to be found.[17] The problem is particularly vexing in mixed questions of law and fact, for the court must either decide that a finding is law or fact, when in reality it is both.[18] Preoccupation with dialectical analysis of mixed questions may prevent the more important study of the purpose of the distinction, which is to determine in which cases the appellate courts should be free to substitute judgment.[19]

14. See Rice, *Law, Fact and Taxes*, 51 COLUM. L. REV. 439, 440-43 (1951).

15. *Ibid.*

16. The Ninth Circuit treats the questions of whether real estate was held in the ordinary course of business as fact. Pacific Homes v. United States, 230 F.2d 755 (9th Cir. 1956); Homan v. Commissioner, 230 F.2d 671 (9th Cir. 1956); Cohn v. Commissioner, 226 F.2d 22 (9th Cir. 1955). Accord in the Tenth, Eighth, and Sixth Circuits. Dougherty v. Commissioner, 216 F.2d 110 (6th Cir. 1954); Dillon v. Commissioner, 213 F.2d 218 (8th Cir. 1954); Home Co. v. Commissioner, 212 F.2d 637 (10th Cir. 1954). Contra in the Seventh and Fifth Circuits, which are in accord with the Third Circuit's holding of the instant case. Smith v. Commissioner, 232 F.2d 142 (5th Cir. 1956); Goldberg v. Commissioner, 223 F.2d 709 (5th Cir. 1955); Galena Oaks v. Scofield, 218 F.2d 217 (5th Cir. 1954); Chicago Title and Trust Co. v. Commissioner, 209 F.2d 773 (7th Cir. 1954). Nor has the scope of review in non-tax administrative cases been certain, though somewhat more capable of prediction. "The one statement that can be made with confidence about the applicability of the doctrine of Gray v. Powell is that sometimes the Supreme Court applies it and sometimes it does not." DAVIS, ADMINISTRATIVE LAW 893 (1951). See also Schwartz, *Gray v. Powell and the Scope of the Review*, 54 MICH. L. REV. 1 (1955).

17. But Congress apparently felt that the distinction was well settled and that there was no need to define more precisely the scope of review. 94 CONG. REC. 8501 (1948).

18. When statutory concepts are involved, the weakness of dialectical efforts to analyze a mixed question as either law or fact is particularly apparent. In saying that certain property was "held for sale to customers in the ordinary course of business," one may consider the conclusion as one of fact by contending that such a finding by a jury would be considered fact or that it is merely an inference from evidentiary facts. By an opposite approach, it can be said that a judge might withhold the question from the jury or that it was an application of a statutory concept necessarily involving the interpretation or construction of the statute.

19. In Baumgartner v. United States, 322 U.S. 665, 671 (1944), Justice Frankfurter recognized this problem: "Thus, the conclusion that may appropriately be drawn from the whole mass of evidence is not always the ascertainment of the kind of "fact" that precludes consideration by this Court. . . . Particularly is this so when a decision here for review cannot escape broadly social judgments. . . . Deference properly due to the findings of a lower court does not preclude the review here of such judgments. This recognized scope of appellate review is usually differentiated from review of ordinary questions of fact by being *called* review of a question of law, *but that is often not an illuminating test and is never self-executing.*" (Emphasis added.) Generally, the courts pay lip service to the distinction without overtly stating that it may sometimes be a label instead of the basis of an opinion in circumstances wherein the purely analytical approach fails to meet the needs of the occasion. The major writers frankly reject the analytical

The instant case represents a growing line of tax jurisprudence wherein some appellate courts, especially the Fifth Circuit, freely substitute judgment by considering an ultimate fact conclusion as one of law.[20] However, other circuits, most notably the Ninth, consistently reject this approach in the application of the "clearly erroneous" rule.[21] In the review of ultimate fact

in deference to the practical approach. For a compilation of leading authorities, see DAVIS, ADMINISTRATIVE LAW 876 (1951).

20. The Fifth Circuit treated ultimate fact conclusions as questions of law and reversed the findings of the Tax Court or district court in the following cases. Smith v. Commissioner, 262 F.2d 142 (5th Cir. 1956); Daniel and Dillar v. First Nat'l Bank, 227 F.2d 353 (5th Cir. 1955), rehearing denied, 228 F.2d 803 (5th Cir. 1956); Consolidated Naval Stores Co. v. Fahs, 227 F.2d 923 (5th Cir. 1956); Smith v. Dunn, 224 F.2d 353 (5th Cir. 1955); Goldberg v. Commissioner, 223 F.2d 709 (5th Cir. 1955); Haley v. Commissioner, 203 F.2d 815 (5th Cir. 1953). The court considered an ultimate fact as law but affirmed in Galena Oaks Corp. v. Scofield, 218 F.2d 217 (5th Cir. 1954). The Seventh Circuit treated ultimate fact conclusions as law and reversed in the following cases. Chandler v. United States, 226 F.2d 403 (7th Cir. 1955); Jones v. Commissioner, 222 F.2d 891 (7th Cir. 1955); Chicago Title and Trust Co. v. United States, 209 F.2d 773 (7th Cir. 1954). *Contra*, Fritz v. Jarecki, 189 F.2d 445 (7th Cir. 1951). The Sixth Circuit, although it ordinarily treats ultimate conclusions as fact, has substituted judgment, considering the question as one of law, where the evidentiary facts were not disputed. Shelton & Co. v. Commissioner, 214 F.2d 655 (6th Cir. 1954); Seagrove Corp. v. Mount, 212 F.2d 389 (6th Cir. 1954) (a non-tax case).

Accord, Philber Equipment Corp. v. Commissioner, 237 F.2d 129 (3d Cir. 1956); District of Columbia v. 7-Up Washington, Inc., 214 F.2d 197 (D.C. Cir. 1954); Commissioner v. Smith, 203 F.2d 310 (2d Cir. 1953).

21. The Ninth Circuit tends to affirm ultimate fact conclusions of the Tax Court or district court by considering them as findings of fact that are not "clearly erroneous." Pacific Homes v. United States, 230 F.2d 755 (9th Cir. 1956); Cohn v. Commissioner, 226 F.2d 22 (9th Cir. 1955); A.B.C. Brewing Corp. v. Commissioner, 224 F.2d 483 (9th Cir. 1955); Ward v. Commissioner, 224 F.2d 547 (9th Cir. 1955); Dunn v. Commissioner, 220 F.2d 323 (9th Cir. 1955); Stockton Harbor Industrial Co. v. Commissioner, 216 F.2d 638 (9th Cir. 1954); Rollingwood Corp. v. Commissioner, 190 F.2d 263 (9th Cir. 1951); Rubino v. Commissioner, 186 F.2d 304 (9th Cir. 1951). But see McGah v. Commissioner, 210 F.2d 769 (9th Cir. 1954), where the court reversed an ultimate fact conclusion as a "clearly erroneous" fact finding, but added "we draw our own inferences from undisputed facts." *But cf.* Hycon Mfg. Co. v. Kock and Sons, 219 F.2d 353 (9th Cir. 1955) (patent infringement case, wherein it was held that "the existence of the basis of fact in documentary form or in agreed statements of the parties does not transmute such propositions into questions of law.").

Tenth Circuit: Home Co. v. Commissioner, 212 F.2d 637 (10th Cir. 1954) (finding favoring commissioner affirmed as not "clearly erroneous"); Friend v. Commissioner, 198 F.2d 285 (10th Cir. 1952) (same treatment); Victory Housing v. Commissioner, 205 F.2d 371 (10th Cir. 1953) (reversed without reference to law-fact or "clearly erroneous").

The Eighth Circuit reversed ultimate conclusions favoring the Commissioner or Collector as "clearly erroneous" in Baltimore Dairy Lunch v. United States, 231 F.2d 870 (8th Cir. 1956); Greenspon v. Commissioner, 229 F.2d 947 (8th Cir. 1956); Dillon v. Commissioner, 213 F.2d 218 (8th Cir. 1954). Ultimate fact conclusions favoring the Commissioner were held not "clearly erroneous" in Scott v. Self, 208 F.2d 125 (8th Cir. 1953); Rider v. Commissioner, 200 F.2d 524 (8th Cir. 1952); Builders Steel Co. v. Commissioner, 197 F.2d 263 (8th Cir. 1952).

The Sixth Circuit affirmed ultimate fact conclusions favoring the Commissioner as not "clearly erroneous" in Winnick v. Commissioner, 223 F.2d 266 (6th Cir. 1955); Dougherty v. Commissioner, 216 F.2d 110 (6th Cir. 1954), but reversed as "clearly erroneous" in Thomas v. Commissioner, 223 F.2d 83 (6th Cir. 1955).

While usually treating ultimate fact conclusions as findings of law, the Fifth

inferences which are applications or constructions of statutory terms by other administrative bodies, the courts generally do not avoid the "substantial evidence" and "rational basis" tests by classification as law in order to enable free substitution.[22] The law classification approach, where used in reviewing tax cases is not limited to cases tried before the Tax Courts, but has also been applied where the courts of first instance were district courts.[23] Supreme Court decisions are not decisive as to which classification should be used in reviewing ultimate fact inferences.[24] Indeed, they afford precedent for either approach.[25] Perhaps in consideration of the purpose of the distinction,[26] the Supreme Court has not seen fit to adhere to a hard and fast line. To explain those cases wherein substitution is freely accomplished by

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Circuit has also considered such inferences as factual and affirmed them. Archer v. Commissioner, 227 F.2d 270 (5th Cir. 1956); Roscoe v. Commissioner, 215 F.2d 478 (5th Cir. 1954); Mabee Petroleum Corp. v. United States, 203 F.2d 872 (5th Cir. 1953); Broford-Toothaker Tractor Co. v. Commissioner, 192 F.2d 633 (5th Cir. 1951); King v. Commissioner, 189 F.2d 122 (5th Cir. 1951). But the court has also reversed under the "clearly erroneous" rule. Ross v. Commissioner, 227 F.2d 265 (5th Cir. 1955); Benton v. Commissioner, 197 F.2d 745 (5th Cir. 1952). An analysis of these cases shows that the intent of the parties or the credibility of the witnesses were major factors leading to the fact classification in all but the *Roscoe*, *Mabee*, and *Archer* decisions, which are better explained by the court's strong agreement with the findings and a desire for simplicity in the explanation of substantively desirable affirmation.

The Fourth Circuit has treated the question in the same manner as the Ninth. Rongleau v. Commissioner, 198 F.2d 253 (4th Cir. 1952).

22. *E.g.*, O'Leary v. Brown-Pacific-Maxon, 340 U.S. 504 (1951); SEC v. Chenery Corp., 332 U.S. 194 (1947). *But see* SEC v. Central Illinois Securities Corp., 338 U.S. 96 (1949). See also note 16 *supra*.

23. Chandler v. United States, 226 F.2d 403 (7th Cir. 1955); Smith v. Dunn, 224 F.2d 353 (5th Cir. 1955); Galena Oaks v. Scofield, 218 F.2d 217 (5th Cir. 1954); Chicago Title and Trust Co. v. United States, 209 F.2d 773 (7th Cir. 1954); Fritz v. Jarecki, 189 F.2d 445 (7th Cir. 1951).

24. Language in Corn Products v. Commissioner, 350 U.S. 46, 51 (1956), suggests that the holding of the instant case is incorrect. In affirming concurrent findings below that grain held for hedging purposes was not "property" within the meaning of the capital gains provisions, the court said "on essentially factual questions the findings of two courts below should not ordinarily be disturbed." While thus calling the finding factual, the court employed statutory interpretation techniques. The strength of the case is lessened even more by the concurrence of the lower courts, and the qualifications "essentially" and "ordinarily." See also Commissioner v. Culbertson, 337 U.S. 733 (1949).

25. Prior to the 1948 amendment introducing Rule 52(a) to Tax Court review, the Supreme Court generally followed the *Dobson* doctrine by considering mixed questions as factual. See, *e.g.*, Commissioner v. Sunnen, 333 U.S. 591 (1948); Bagley v. Commissioner, 331 U.S. 737 (1947); Kelly Co. v. Commissioner, 326 U.S. 521 (1946). Some pre-*Dobson* cases are contra: Bogardus v. Commissioner, 302 U.S. 34 (1937); Helvering v. Tex-Penn Oil Co., 300 U.S. 481 (1936). See note 16 *supra* on the inconsistent review of non-tax administrative cases. The courts of appeal that consider ultimate fact as a legal inference have found strong support in non-administrative cases. Baumgartner v. United States, 322 U.S. 665 (1944); Graver Tank and Mfg. Co. v. Linde Air Products, 336 U.S. 271 (1949). *But cf.* O'Leary v. Brown-Pacific-Maxon, 340 U.S. 504 (1951) (workmen's compensation case).

26. See note 19 *supra*.

classifying an ultimate fact conclusion as law, one must examine underlying factors. The instant case is susceptible of explanation on such a basis. One factor appears to be a Court of Appeals attitude of statutory interpretation favoring the taxpayer.[27] Tax Court decisions arising for review by the appellate courts are usually unfavorable to the taxpayer,[28] and therefore prompt free substitution of judgment, as in the instant case, where a statutory interpretation contrary to that of the Tax Court prevailed on appeal. The absence of dispute as to the basic facts precluded the argument against free substitution that the court which heard the witnesses was best qualified to draw inferences from conflicting facts.[29] The subject matter was not so highly technical that it would discourage substituting judgment on the opinion of an expert body.[30] The application of a statutory concept made it reasonable to contend that the judicial function of statutory interpretation was involved.[31] The factual situation and the issue of the case arise with great frequency,[32] a characteristic that would motivate treatment as law so as to give the case greater precedent value.[33] But these same factors are present in those circuits, which unlike the Third Circuit Court's holding in the instant case, consider ultimate fact inferences as questions of fact. It is interesting to note again that fact classification is usually a concomitant of non-substitution,[34] whereas law classification almost uniformly precedes full substitution and reversal.[35] Are different views as to what is analytically law responsible for the difference among the circuits in the scope of review over ultimate fact conclusions? Or do variant views as to

27. This is suggested by the very frequency and near uniformity with which findings of an ultimate fact nature that have been freely reviewed as law have been reversed, and decisions rendered in favor of the taxpayer. See note 20 *supra*. But see note 21 *supra*. Language in Pacific Homes v. United States, 230 F.2d 755 (9th Cir. 1956) illustrates the different attitude of the leader of the "fact" school of circuits, the Ninth. "The sovereign is not to be frustrated in the replenishment of its fisc by the finespun arguments of the appellant."

28. See notes 20 and 21 *supra*.

29. *Cf.* Great A & P Tea Co. v. Supermarket, 340 U.S. 147 (1950). Even the Ninth Circuit, while sticking to the fact classification, has stated: "We draw our own inferences from undisputed facts." McGah v. Commissioner, 210 F.2d 769 (9th Cir. 1954). *But cf.* Hycon Mfg. Co. v. Kock and Sons, 219 F.2d 353 (9th Cir. 1955) (non-tax case).

30. *Cf.* American Power & Light Co. v. SEC, 329 U.S. 90, 112 (1946).

31. *Cf.* FTC v. Gratz, 253 U.S. 421, 427 (1920).

32. See note 16 *supra*.

33. *Cf.* Commissioner v. Scottish American Inv. Co., 323 U.S. 119, 125 (1944); Rice, *Law, Fact and Taxes*, 51 COLUM. L. REV. 439, 472 (1951).

34. The Eighth Circuit cases are the most notable exception to this statement. The Ninth and Fifth Circuit treatment of "fact" findings best illustrates it. See note 21 *supra*.

35. See note 20 *supra*.

the weight of factors pressing for substitution of judgment determine whether a mixed question will be considered one of law?

Since the "clearly erroneous" rule provides a large margin for substitution of judgment,[36] and in view of the relative paucity of substitution that accompanies fact classification,[37] it is submitted that variant views as to the weight of factors pressing for substitution of judgment afford the most logical explanation of the inconsistency between circuits. Different attitudes as to the construction of statutory tax provisions appear to be the most important inarticulate factor.[38] Classification of ultimate fact inferences as law limits the application of the "clearly erroneous" rule to inferences of an evidentiary nature, such as questions of intent, time, place, etc. Law classification leaves the court absolutely free to substitute judgment on inferences which are primarily extensions of tax statutes through interpretative rule making. With respect to this aspect of the instant case, the writer feels that in effectively repealing the rule of the *Dobson* case, which had afforded the Tax Court rule-making authority, Congress intended that the interpretative rule-making authority under tax statutes should be vested in the courts and therefore law classification is correct.[39] The broadness of the "clearly erroneous" rule also suggests that classification as law is unnecessary to accomplish substitution of judgment in cases of rule making by interpretation.[40] However, if consistency in statutory construction is desired, control through legal precedent could be an objective affording further explanation.[41] Simplicity in explaining substantively desirable substitution also seems important.[42] It is unlikely that ultimate fact conclusions will be widely treated as law in non-tax administrative decisions,[43] for

36. See note 7 *supra*. The lack of any one-sided pattern in the Eighth Circuit is also illustrative. See note 21 *supra*.

37. See notes 21 and 34 *supra*.

38. The Fifth Circuit very frequently reverses decisions against the taxpayer and is quick to classify mixed questions as law in so doing. The Ninth Circuit almost invariably sustains the Tax Court findings as factual and not "clearly erroneous"; the decisions are generally unfavorable to the taxpayer. See notes 20, 21, and 27 *supra*.

39. See note 14 *supra* and text discussion. But the liberal interpretation of exclusionary tax provisions is questionable. See the dissent in Smith v. Commissioner, 232 F.2d 142, 171 (5th Cir. 1956), and cases cited therein.

40. See note 20 *supra*.

41. See note 33 *supra*.

42. Illustrative of this point are those cases wherein the Fifth Circuit affirmed ultimate fact conclusions as not "clearly erroneous." See note 21 *supra*. See also DAVIS, ADMINISTRATIVE LAW 907 (1951).

43. Although the dissent in Ferenz v. Folsom, 237 F.2d 46 (3d Cir. 1956) pointed to the instant case as precedent, the court held that an ultimate infer-

the factors favoring such treatment are not prevalent, and there are weighty factors against it.[44] But the growing line of tax jurisprudence represented by the instant case provides considerable precedent for freedom of review if inarticulated considerations should call for it.

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CONSTITUTIONAL LAW — DUE PROCESS — BLOOD TEST

The truck petitioner was driving collided with an automobile on a New Mexico highway. Three occupants of the automobile were killed and petitioner was seriously injured. He was taken to a hospital where a physician removed a sample of his blood at the request of a state patrolman. The blood sample was taken with a hypodermic needle while petitioner was unconscious. Over his objection, evidence of this blood test, showing that petitioner was under the influence of alcohol, was introduced at his trial. After his conviction of involuntary manslaughter, the Supreme Court of New Mexico denied a writ of habeas corpus. On certiorari, the Supreme Court of the United States *held*, affirmed. Petitioner's conviction, based on the result of the involuntary blood test, did not deprive him of his liberty without that due process of law guaranteed him by the Fourteenth Amendment to the Constitution.[1] *Breithaupt v. Abram*, 77 Sup. Ct. 408 (1957).

It has long been settled that the due process provision of the Fourteenth Amendment does not incorporate the Federal Bill of Rights[2] as restrictions upon the powers of the states.[3] On the

ence of the Social Security Administrator was factual, although involving broad statutory terms.

44. Many administrative agencies clearly possess delegated legislative authority, whereas Congress, in creating the "clearly erroneous" rule, apparently intended that the Tax Court should not have such authority. The expertise argument (favoring non-substitution on highly technical questions), while often present in tax matters, is more clearly and consistently present in reviewing the findings of such agencies as the ICC, FCC, and SEC. The strong precedent of such cases as O'Leary v. Brown-Pacific-Maxon, 340 U.S. 504 (1951) (statutory construction of ultimate fact inferences considered fact and subject to substantial evidence rule) would discourage any large scale law classification under the substantial evidence rule.

1. U.S. CONST. amend. XIV, § 1: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

2. U.S. CONST. amend. I-VIII.

3. See concurring opinion of Mr. Justice Frankfurter in Adamson v. California, 332 U.S. 46, 59 (1947).