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Evidence--Stipulations and Admissions by Attorney-Client Bound Thereby

J. L. R.
West Virginia University College of Law

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Evidence—Stipulations and Admissions by Attorney—Client Bound Thereby.—D was convicted of unlawful possession of whisky. The evidence showed that the whisky was in D's private dwelling, a bedroom connected to his store, and not in the store itself. At the trial D's attorney said "Your Honor, we will stipulate that is the whisky he had in his store". D appealed the conviction to the Supreme Court of North Carolina. Held, that the store of D was an improper place for the possession of whisky. By statute a store building is not an authorized place for that purpose. The concurring opinion stated that the evidence showed that possession of whisky was in D's private dwelling but D's stipulation, entered as a judicial admission before the court, placed the whisky in the D's store. The stipulation overrode the evidence and was sufficient to support the conviction. State v. Welborn, 106 S.E.2d 204 (N.C. 1958).

In the principal case a stipulation by the defendant's attorney, made as a judicial admission, caused the conviction of the defendant, even though the evidence might have shown that no crime was committed. The defendant was bound by the statement once it was made before the court.

It is generally held that attorneys are the agents of their clients for the purpose of making admissions in all matters relating to the progress and trial of an action. 2 Jones, Evidence § 358 (5th ed. 1958). And statements or admissions of fact, made by an attorney which are relevant to and are designed to accomplish the purpose of his employment, are regarded as being within the implied authority of the attorney to bind his client and may be admissible in evidence against the client in accordance with the principles which generally govern the relation of principal and agent. Gottwals v. Rencher, 60 Nev. 47, 98 P.2d 481 (1940); See Clapp v. Clapp, 241 N.C. 281, 85 S.E.2d 153 (1954); Smith v. State, 217 Miss. 123, 63 So. 2d 557 (1953).

The judicial admission is a statement made by a party, or his attorney, in the course of a judicial proceeding, in open court for the purpose of being used as a substitute for the regular legal evidence of the facts at the trial. Martin v. State, 46 Okla. Cr. 411, 287 Pac. 424 (1929). Such admissions bind the client even though they are made orally. Godwin v. State, 24 Del. 173, 74 Atl. 1101 (1910). The judicial admission effectively removes the admitted fact from the field of issuable matters. Clapp v. Clapp, supra; 9 Wigmore, Evi-
CASE COMMENTS


There is scarcely any limit to the admissions which an attorney may make for a client by way of judicial admissions and they are not confined to the facts of the case or to the waiver of proofs. But it has been held that an admission in a criminal case does not of itself afford a basis for a verdict because it does not amount to a confession of guilt but is rather an avowal of a fact from which guilt may be inferred, or in connection with other facts, guilt may be proved. Commonwealth v. Elliott, 292 Pa. 16, 140 Atl. 537 (1928). But in extra-judicial admissions the implied authority of the attorney to bind the client is limited. 2 Jones, Evidence § 358. And statements made by an attorney in the absence of his client and without his knowledge or consent are generally held to be mere expressions of opinion and do not bind the client. Cato v. Sillings, 137 W. Va. 694, 73 S.E.2d 731 (1952). Nor has an attorney the implied power to compromise and settle the client's claim. Harris v. Diamond Const. Co., 184 Va. 711, 36 S.E.2d 573 (1946); Watt v. Brookover, 35 W. Va. 328, 18 S.E. 1007 (1891).

In the principal case there might be some question as to whether the defendant's attorney meant to admit that the whisky was in the defendant's store or whether he was merely stipulating that the whisky then being introduced into evidence was the whisky that defendant had in his possession, thereby waiving proof of that fact. A stipulation may be set aside on grounds of improvidence if both parties can be restored to the same condition as when the agreement was entered into, but, as stated before, a judicial admission is conclusive evidence of the fact admitted and cannot be withdrawn. Cole v. State Compensation Comm'r, 114 W. Va. 633, 173 S.E. 263 (1934). It would seem that the stipulation was much too broad under the circumstances.

The utmost caution should be observed, especially in a criminal case, in making stipulations and admissions before the court in order to simplify the proceedings. It is felt that attorneys should re-
alize that their statements in courts should be carefully considered beforehand so as to avoid the result reached in the principal case. Attorneys, as agents for their clients, should make out the best case possible for the client and force the adversary to prove every part of his case rather than allow the verdict to be based on an improvi-
dent admission.

J. L. R.

Future Interests—Limitations to Heirs Postponed—Deter-
mination of Takers.—In 1909 T died devising certain real estate to
his son A and A's wife, B, for and during the life of the survivor of
them, remainder to their children. The will further provided that if
A and B died without having had any children, then the real estate
was to be divided among T's heirs. In 1910 A died childless. The
property was subsequently sold by agreement between the life ten-
ant, B, and T's heirs. A disagreement arose among the heirs as to
the proper distribution of the proceeds. P contended that the heirs
of T, who were to share the proceeds of the sale, were to be deter-
mined upon the death of the life tenant, B, and since that class is
still contingent as to membership it would be impossible to distribute
the proceeds. D contended that the heirs of T should be determined
at the death of T or no later than the death of A when it became
conclusive that he would have no children. The lower court ac-
cepted D's latter contention. Held, that as a general rule when a
testator directs that upon the happening of a certain event a partic-
ular interest or estate is to go to his heirs, the class is to be deter-
mimed as of the date of testator's death unless a contrary intent is
plainly manifested in his will. While the court intimated that the
case fell within the general rule, they further stated that when it
conclusively appeared, by the death of A, that the contingent re-
mainder in his unborn children would never vest, the heirs must be
determined no later than that date. Dean v. Lancaster, 105 S.E.2d

In order to properly analyze the principal case it becomes
necessary to determine the particular estates in land created so one
may apply the particular rules of law applicable. Upon the death
of the testator the son and his wife had a vested life estate in pos-
session. This is evidenced by the fact that the estate was created in
favor of known, ascertained persons with no condition precedent to
their taking the life estate.