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Stipulations--Operation and Effect--Administrative Compared With Judicial Proceedings

H. C. B.
West Virginia University College of Law

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In Virginia, it has been said the object of its legislation, which is almost identical to that of this state, was to simplify the procedure, not narrow the common law writ of quo warranto. Watkins v. Venable, 99 Va. 440, 39 S.E. 147 (1901). The instant case is in line with the view enunciated by the Matthews decision, that it is not necessary for the relator to show title in himself, but he must have a special interest in the office. It is submitted that while this holding develops a facet not heretofore used in this jurisdiction for trying title of public officers, it is not an unreasonable interpretation of legislative intent, but rather the case represents a proper extension of a little-used extraordinary remedy.

E. W. C.

STIPULATIONS—OPERATION AND EFFECT—ADMINISTRATIVE COMPARED WITH JUDICIAL PROCEEDINGS.—In a proceeding before the Tax Court the parties stipulated that the taxpayers' books showed accounts receivable of certain amounts and that they had been charged off as bad debts. The Tax Court found the evidence so confusing as to disclose no basis for this debt and declared it invalid and no basis for a bad debt deduction. The taxpayers claimed this was error, saying they were misled by the pleadings (stipulations), believing that the Bureau conceded the validity of the debt and were not prepared to present evidence on that issue. The taxpayers argued that the burden of showing the debt was sustained by the stipulation. Held, that while the stipulation prevents the Bureau from challenging the entries on taxpayers' books, it cannot prevent the Bureau from questioning the factual basis of the entries. Concession of the existence of the entries did not also concede the basis for the entries. This was for the taxpayers to prove in order to get the deductions for the bad debts. Russell Box Co. v. Comm'r of Internal Revenue, 208 F.2d 452 (1st Cir. 1953).

Tax Court Rule 31 (b) directs that parties shall endeavor to stipulate evidence to the fullest extent to which either complete or qualified agreement can be reached. This requirement and the doctrine of the principal case taken together may seriously embarrass a prospective litigant who is to stipulate if possible, but must use extreme care in construction and analysis and may assume nothing not stated with explicit literalness.

Except for jurisdiction and matters offending sound public policy, the power of parties to stipulate in a civil action is practically unlimited and parties may stipulate away statutory or even constitutional rights. Budá v. State, 105 N.Y.S.2d 956, 278 App.

When the language is plain and free from ambiguity, the understanding of the parties must be ascertained from its terms and whatever those terms imply will be deemed embraced within it. Schroeder v. Frey, 114 N.Y. 266, 21 N.E. 410 (1889). The West Virginia court has said that the court may make any legitimate inference from the stipulation which the jury might. National Surety Co. v. Conley, 108 W. Va. 589, 592, 152 S.E. 3, 5 (1930). However, it has been held elsewhere that only necessary inferences can be so drawn. Hooper v. Kennedy, 100 Vt. 314, 137 Atl. 194 (1927); Mathie v. Hancock, 78 Vt. 414, 63 Atl. 143 (1906).

Despite minor variances, all these views indicate that the construction of stipulations is a matter of considerable technicality. The results in typical cases confirm this impression. Patterson v. Collie, 75 Ga. 419 (1885) held that a stipulation that copies of original papers might be used in lieu of the originals merely dispense with the need to lay a foundation for introduction of secondary evidence and left the originals open to challenge as forgeries or invalid in legal effect. Where parties stipulated that a summary of certain War Department records was correct and might be received at the trial with the same force and effect as if the records summarized had been introduced into evidence, the court pointed out that the stipulation merely authorized use of the report instead of the original record, but the report was subject to all objections available as to the records. United States v. Balance, 59 F.2d 1040 (D.C. Cir. 1932). A concession that a witness if called would testify to a certain effect is not a concession that the facts are as claimed and that the testimony will establish them to be so. Goess v. Lucinda Shops, 93 F.2d 499 (2d Cir. 1937).

The stipulations dealt with in the authorities reviewed appeared in connection with proceedings in courts of law. That in the principal case involved use before an administrative agency and affords appropriate occasion to examine the question of the force and effect of stipulations in administrative proceedings.

An experienced tax practitioner observes that, in tax contests, counsel should attempt to stipulate all facts about which there is no dispute [referring to Tax Court Rule 31 (b)], but should nevertheless not pay too high a price for a stipulation. Bickford, Successful Tax Practice 314, 318 (1950). The administrative procedure act in somewhat oblique language seems to encourage hearing examiners to promote the use of stipulations. In general, ad-
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ministrative bodies, like courts of law, favor the practice, the general purposes being the same in both. The cases indicate that their legal effect is also much the same before either type tribunal. Thus, the court in Ahles Realty Corp. v. Comm'r, 71 F.2d 150 (2d Cir. 1934) stated unequivocally that matters stipulated before the Board were controlled by the stipulation entirely, making it unnecessary to refer the matter back to the Board for further consideration of the issues affected. Again, a party seeking to go outside a stipulation with the NLRB to show reasons for not following the express terms thereof was not permitted do so. NLRB v. Gerling Furniture Manufacturing Co., 103 F.2d 663 (7th Cir. 1939). In another proceeding to enforce an NLRB order, the court negatived the claimed requirement that the Board do more than was demanded in the face of the clear-cut stipulation upon which the issue was tried. NLRB v. Hudson, 135 F.2d 380 (6th Cir. 1943), cert. denied, 320 U.S. 740 (1943); 3 Pike & Fischer Ad. Law (Decision Notes) § 582.

As the principal case further illustrates, the strictness used in interpreting stipulations in agency proceedings is the same as for court proceedings. Thus a stipulation in a case before the Board of Tax Appeals that a son of the decedent had filed "proof of claim for reimbursement" in the state court where administration was pending was held not to admit the truth of an allegation in the proof of claim but only that a proof of claim containing such an allegation was filed. First-Mechanics Nat. Bank v. Comm'r of Internal Revenue, 117 F.2d 127 (3d Cir. 1940). Where a stipulation before the Federal Trade Commission incorporated a memorandum relating to the appointment of two representatives to serve on a committee later found to be functioning illegally, the court accepted the stipulation as revealing illegal trade practices notwithstanding the fact that the memorandum was otherwise inadmissible hearsay. Phelps Dodge Refining Corp. v. F.T.C., 193 F.2d 398 (2d Cir. 1943). The consequence is that by stipulating one can effectively bind himself as to matters which could not be put in evidence but for the stipulation.

Whatever appropriate procedural differences one may expect between agency and court hearings, the use and construction of stipulations appear to be substantially identical. While their use is favored and should not be avoided, counsel must frame them with great care and never rely on an expectation that more (or less) will be embraced than is clearly expressed in the stipulation.

H. C. B.