

a statement to Tate, and that Tate agreed to it.

Second, so far as lot two (2) is concerned, the defendant, Juanita Tate, is a remote grantee from Blanton. That also is true of the interest of Leona Tate in lot one (1). It was certainly admissible as to them. (Taylor v. Cox, et al 218 S. C. 188, 635 E (2d) 470)

As to the defendants' second and third exceptions the question of whether the track bed lay across lot one (1) or across separate property of the Tates was a matter of conflicting evidence and was properly submitted to the jury and determined by them.

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J.C.

As to exception five, no controversy for settlement by declaratory judgment was before the Court on the facts, and the Court does not enunciate general rights in the absence of clear and immediate controversy.

As to exceptions six and seven, the owners or subservient estate may reasonably locate an easement of necessity, but once so located they have no unilateral right to change the same. Brasington vs. Williams 143 SC 223, 1415 S. E. 375, 25 Am Jur. 2d Easements Section 69, page 476, 68 A.L.R. 528, 537. The jury determined where the easement had been located.

Accordingly the defendants' motion is denied.

Frank Egges
Judge, Thirteenth Judicial Circuit

November ² 30, 1984.

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