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Property

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PROPERTY

I. LANDLORD AND TENANT

A. Lease and Interdependent Instruments

Wilson v. McAbee[1] was an appeal from a directed verdict for the plaintiff, a landlord. He had negotiated financial arrangements with the tenant to open a drug store which included a mortgage loan of $21,500 secured by the tenant's home. When the tenant went into possession of the premises on November 1, 1963, unexpected repairs had to be made. The evidence at trial indicated that the landlord had agreed to make these repairs and later be reimbursed by the tenant.

When the mortgage on the tenant's home had been prepared he went to the office of his attorney to execute three instruments: the mortgage, a lease, and a profit sharing agreement with the landlord. The first two were signed but the latter could not be agreed upon and was never signed. Although the lease and the profit sharing agreement were separate instruments the lease contained the following: " 'It is further agreed that this lease shall be a part of agreement entered into today between the parties.' "[2]

The landlord, thirty months after the tenant commenced occupancy, gave notice of termination based on the position that the lease, although signed by the parties, was ineffectual. He contended that, firstly, the lease was never delivered and, secondly, it was interdependent with the profit sharing agreement, which, since it was never signed, made both ineffectual. The tenant relied on the written lease as valid.

The court held that a recital in the lease would not make the lease and the profit sharing agreement interdependent but that such a relationship must be drawn by the jury from the intentions of the parties as gathered from all the circumstances. Therefore, without consideration of the questions raised by the tenant, a new trial was granted.

1. 256 S.C. 211, 182 S.E.2d 313 (1971).
2. *Id.* at 211, 182 S.E.2d at 314.

B. Housing Code Violation—Duty to Pay Rent

In *Riley v. Nelson*[3] a tenant sought relief from his obligation to pay rent because of the landlord's violation of the Housing Code.

The City of Greenville enacted the Minimum Standard Housing Code of the City of Greenville in 1968.[4] Prior to this the defendant had taken the plaintiff as a tenant and in 1969, the City notified the landlord that the building occupied by the tenant was in violation of the Housing Code. The landlord attempted to correct the violations but, in addition, raised the rent from $8.00 to $12.00 per week. Thereupon, the tenant ceased paying any rent. In 1970, the landlord commenced eviction proceedings and the tenant defended on the theories that, firstly, there is no duty to pay rent on a dwelling which is below the Minimum Standard Housing Code, and, secondly, there is no duty to pay a rental increase based on the landlord's attempt to comply with the Code.

On appeal, the South Carolina Supreme Court recognized the contentions of the tenants as based on the District of Columbia case of *Brown v. Southall Realty,*[5] where a lease was found void and unenforceable on property where housing violations existed. The *Brown* case, however, was distinguished in *Saunders v. First National Realty Corp.*[6] in which violations occurred during the tenancy, instead of prior to the commencement. There the District of Columbia Court of Appeals succinctly stated, "We did not hold and we now refuse to hold that violations occurring after the tenancy is created void the lease."[7] The South Carolina Supreme Court, without adopting the rule of the *Brown* case, found that since the violations of the Housing Code occurred after the inception of the tenancy a valid lease contract remained in effect.

3. 256 S.C. 545, 183 S.E.2d 328 (1971).
4. Pursuant to provisions of S.C. CODE ANN. §§36-501-11 (1962).
5. 237 A.2d 834 (D.C.Ct.App. 1968) *construed in* Diamond Housing Corp. v. Robinson, 257 A.2d 492, 495 (D.C.Ct.App. 1969).
6. 245 A.2d 836 (D.C.Ct.App. 1968).
7. *Id.* at 638.
8. 256 S.C. 431, 182 S.E.2d 735 (1971).

II. EMINENT DOMAIN

A. *"Taking" of Private Property*

In the case of *Spradley v. South Carolina State Highway Department,*[8] the Highway Department made improvements and widened the highway in front of the plaintiff's property. It was found at the trial that such improvements had caused flooding on the property and, on appeal, the question was raised as to whether there had been sufficient evidence to justify a finding that there had been an uncompensated taking contrary to the South Carolina Constitution.[9]

What constitutes a "taking" which requires compensation has become of increasing importance as public work projects progress.[10] The constitutional prohibition has been interpreted as protecting all of the essential elements of ownership whether or not there is a physical invasion[11] and it is a jury question whether the addition of water destroyed the usefulness of the property.[12] In the present case the court decided that when the improvement causes more water to remain on the property due to reduced drainage after the improvement there is sufficient evidence to allow the question of whether there has been a taking to go to the jury.

B. *Damages*

In *Carolina Power & Light Co. v. Gasque,*[13] the power company had instituted a condemnation proceeding against Gasque to acquire an easement of right of way for the purpose of constructing an electric power line across 4.87 acres. A jury impaneled by the Clerk of Court for Marion County awarded damages to the property owner in the amount of $2,800. Upon appeal, the Court of Common Pleas of Marion County awarded damages in the amount of $22,000. The

9. S.C. CONST. art. I, §17.

10. *See,* Webb v. Greenwood County, 229 S.C. 267, 92 S.E.2d 688 (1956); Early v. S. C. Public Service Authority, 228 S.C. 392, 90 S.E.2d 472 (1955); Milhous v. State Highway Department, 194 S.C. 33, 8 S.E.2d 852, 128 A.L.R. 1186 (1939); Chick Springs Water Co. v. State Highway Department, 159 S.C. 481, 157 S.E. 842 (1930).

11. *See,* Owens v. S. C. State Highway Dept., 239 S.C. 44, 121 S.E.2d 240 (1961); Collins v. City of Greenville, 233 S.C. 506, 105 S.E.2d 704 (1958); Gasque v. Town of Conway, 194 S.C. 15, 8 S.E.2d 871 (1940).

12. Baynhan v. State Highway Dept., 181 S.C. 435, 187 S.E. 528 (1936).

13. 258 S.C. 1, 186 S.E.2d 813 (1972).

case constituted an appeal by the power company following a motion for a new trial on the theory " 'that the jury verdict [was] grossly excessive and not based on the evidence and testimony presented in this case.' "[14]

The South Carolina Supreme Court reviewing the testimony at the trial level found that the verdict was not so excessive as to warrant the conclusion that it was a result of caprice, passion, or prejudice. Testimony on behalf of the landlord indicated that a subdivision development plan had already been prepared. The condemned right of way would affect a total of 28 proposed lots and valuation of those lots, for the purposes of awarding just compensation, was arrived at by subtracting from the value of the improved lots, the costs of development such as water, sewage and engineering expenses. Using the estimated low figures for purposes of this calculation, the total damage to the property owner would be $26,500. Although witnesses for the power company testified that the fair market value of 4.87 acres was between $2,237.50 and $2,800, counsel at the trial did not object to the property owner's method of valuation.

The ruling of the trial judge against granting a new trial will not be disturbed unless the "verdict is wholly unsupported by evidence or is so excessive as to justify the inference that it was capricious or influenced by passion, prejudice or other considerations not found in the evidence."[15] From the complete testimony the jury could have accepted a valuation between a low of $2,237.50, and a high of $26,500. The South Carolina Supreme Court held that the verdict of $22,000 was not so excessive as to be overturned and particularly noted that there had been no objection to the landowner's testimony regarding the method of valuation.

Central Electric Power Cooperative, Inc. v. Brown[16] was another case which involved the amount of damages in a condemnation. The trial court's[17] award of $36,500 was appealed to the South Carolina Supreme Court which reversed the lower court and ordered a new trial.

14. *Id.* at 3, 186 S.E.2d at 814.

15. S. C. Public Service Authority v. Spearwant Liquidating Co., 196 S.C. 481, 484-85, 13 S.E.2d 605, 606 (1941).

16. 258 S.C. 148, 187 S.E.2d 509 (1972).

17. Richland County Ct. Common Pleas.

Mr. Brown owned a 500 acre tract of land north of Columbia which was suitable for future development as residential property. Over this land the power company acquired a right of way 150 feet in width and the right to cut away all "danger trees." Actually taken was a total of 22.67 acres but because the right of way generally followed the perimeter of the property a very small acreage was isolated. In the condemnation proceeding, the jury awarded damages in the amount of $36,500 to Mr. Brown in compensation for the taking of 22.67 acres. This amount was nearly equal to that which the power company's expert witnesses fixed as the highest value.

The condemnation proceeding was appealed to the South Carolina Supreme Court on the issue of whether there had been an erroneous admission of evidence that Mr. Brown had agreed with the power company to locate the right of way along the perimeter. Over the objection of counsel, Mr. Brown had been cross-examined on the allegedly agreed location of the right of way and the power company's witnesses indicated there had been a mutual agreement. This testimony had been admitted by the trial judge on the theory that Mr. Brown had a duty to minimize his damages and in anticipation of testimony that a perimeter right of way rather than a diagonal one would reduce severance or special damages. The South Carolina Supreme Court, however, concluded that the testimony was wholly irrelevant to any issue in the case and clearly prejudicial. The testimony was irrelevant because there had been no evidence that the perimeter location enhanced, rather than minimized, appellant's damages. Furthermore, testimony that such a location had been agreed upon impeached Mr. Brown and distracted the attention of the jury from the real issues.[18] A new trial was ordered by the court.

C. Statute of Limitations

In the case of *McCurley v. South Carolina State Highway Department*[19] the plaintiff had acquired, in 1958, property located immediately downstream from a culvert carrying water under a street in the City of Anderson. Although grad-

18. *Id.* at 153, 187 S.E.2d at 511; McVey v. Whittington, 248 S.C. 447, 151 S.E.2d 92 (1966); State v. Brock, 130 S.C. 252, 126 S.E. 28 (1925).

19. 256 S.C. 332, 182 S.E.2d 299 (1971).

ual erosion had widened the stream there had been no appreciable damage to the property because the City had construced a retaining wall. In the winter of 1964-65, however, heavy rains and the inadequacy of the culvert caused the erosion of twenty feet of Plaintiff's property and undermined his house causing it to be uninhabitable. To remedy the situation the City installed a second culvert on January 2, 1969.

Suit was filed against the City of Anderson and the South Carolina Highway Department in the Court of Common Pleas, Anderson County, in February, 1969, following the installation of the second culvert. The Highway Department, on motion, was eliminated from the case, and judgment was had against the City on the theory that damages to the plaintiff's property amounted to a taking without just compensation.[20]

The City appealed to the South Carolina Supreme Court on the question of whether the cause of action had been barred by the six year statute of limitations.[21] The court held it was not, citing *Hilton v. Duke Power Co.*[22] as a concise summary of South Carolina law. Although the statute of limitations begins to run upon the first occurrence of actual damage, if the injury is caused by negligence or if it is abatable then there arises a continuing cause of action and if brought with the statutory period the plaintiff may recover for the complete injury.[23]

The problem of determining when the statute of limitations begins to run has often been treated in other jurisdictions which usually attempt to classify the injury as "permanent" or "recurring." In addition, some cases such as the present one classify it as abatable or unabatable, the former being temporary, and the latter permanent. A landowner injured by an abatable or temporary injury is considered to have a continuing cause of action on the theory that he has a right to assume the harm will be abated and it is impossible to determine the extent of the injury in one action.[24]

20. *Id.*

21. S.C. CODE ANN. §10-143 (1962).

22. 254 F.2d 118 (4th Cir. 1958).

23. *Id.* at 122. *See also,* Conestee Mills v. City of Greenville, 160 S.C. 10, 158 S.E. 113, 75 A.L.R. 519 (1931) and Lawton v. Seaboard Air Line Ry., 75 S.C. 82, 55 S.E. 128 (1906).

24. Annot., 5 A.L.R.2d 302, 338-40 (1949).

III. RESTRICTIVE COVENANTS

A. *Intention of the Parties*

The case of *Nance v. Waldrop*[25] presented the court with a question regarding the application of a restrictive covenant to house trailers. In 1938, Robert Edwards as Trustee for James Edwards received court approval for the sale of a 500 acre tract of James Edwards' land. The court's decree stated that all deeds should contain a restriction prescribing that: "'(1) said property shall be used solely for residential purposes . . . .'" [*sic*] (2) No house shall be erected thereon costing less than Four Thousand Five Hundred ($4,500.00) Dollars.'"[26] In 1969, this suit was commenced to enjoin the defendant from developing the land as a trailer park, and from using a trailer as his personal residence. The plan to develop a trailer park was subsequently abandoned and from an injunction by a lower court, the defendant appealed the question of whether he might move a mobile home, trailer-type residential unit, onto the property and occupy it as a residence without violating the restriction.

The South Carolina Supreme Court in construing the restrictive covenant attempted to give effect to the intent of the parties as determined from the instrument and surrounding circumstances.[27] Since the mobile home was virtually unknown in 1938, did it mean that the restriction should not be interpreted as prohibiting placement of the trailer on defendant's lot? The court found that it did not. The restrictions embodied in the words "residential," "house" and "erected" indicated an intent that only homes of a conventional structure be built.[28] The court also interpreted the covenant as prohibiting mobile homes in the light of the general building scheme which had developed based upon these restrictions. The adjacent area was made up of residential subdivisions and the property owners within had relied upon the restrictions in buying and developing their property. Therefore, the injunction of the lower court was affirmed.

25. 258 S.C. 69, 187 S.E.2d 226 (1972).

26. *Id.* at 71, 187 S.E.2d at 227.

27. Cheves v. City Council of Charleston, 140 S.C. 423, 138 S.E. 867 (1927).

28. 258 S.C. at 73, 187 S.E.2d at 228; *accord,* Swigart v. Richards 178 N.E.2d 109 (Licking County Ct. Common Pleas, Ohio 1961); Pagal v. Gisi, 132 Colo. 181, 286 P.2d 636 (1959).

Judge Brailsford, joined by Judge Bussey, dissented from the court's opinion interpreting the restrictive covenants. Since the defendant was using his property for a residential purpose the dissenters saw the issue as whether the defendant could be prohibited from building a house, costing less than $4,500. The second restriction did not require that a house be built on the lot, only that if one is built, it not cost less than the specified amount. The defendant, by putting a mobile home on the lot, was considered by the majority as not having erected a conventional house, therefore, reasoned the dissenters, there had been no violation of the second restriction. This strict construction was considered as properly promoting the plain and obvious purposes of the instrument.[29] The dissent analogized to the case of *Schaeffer v. Gatling*[30] in which a restriction limiting use to "'strictly for residential purposes" was interpreted not to prohibit house trailers if used as residences. The general developmental scheme relied upon by the plaintiffs, the dissent argued, would be effective to supply restrictions omitted but could not be allowed to rewrite the restrictions themselves.

B. Radical Change in the Surrounding Area

Flinkingshelt v. Johnson[31] was a declaratory judgment proceeding to declare void certain restrictive covenants. The order of the lower court which upheld the covenants was affirmed in a *per curiam* opinion.

The particular findings of fact by the Greenville County Court of Common Pleas comprehensively described the character of the land in question, and may be summarized as follows: In 1955, ten owners of contiguous property, for the purpose of maintaining its residential character, recorded restrictive covenants prescribing minimum lot sizes and single family residences. Since then the character of the property has remained residential and includes attractive lots and homes. It is bounded by Pleasantburg Drive, on the other side of which, there has been considerable commercial development

29. 258 S.C. at 74, 187 S.E.2d at 229; *citing,* Donald E. Blatz, Inc. v. R. V. Chandler & Co., 248 S.C. 484, 487-488, 151 S.E.2d 441, 443 (1966); Cothran v. Stroman, 246 S.C. 42, 44, 142 S.E.2d 368 (1965); McDonald v. Welborn, 220 S.C. 10, 66 S.E.2d 327 (1951).

30. 243 Miss. 155, 137 So.2d 819 (1962).

31. 258 S.C. 77, 187 S.E.2d 233 (1972).

including service stations, convenience food stores, bowling alleys, theatres, parking areas, office buildings and the Greenville Technical Education Center.

The plaintiffs, owners of the property on the residential side of Pleasantburg Drive, and whose predecessor in title was a co-covenantor, sold lots to some of the defendants who relied on the residential restrictions. In addition, the plaintiffs have retained some lands on the residential side and the court found that they intended to sell it for commercial purposes at commercial prices after obtaining a court decision voiding the restrictions.

The restrictions, according to the plaintiffs, should have been voided for two reasons: (1) there was no general plan or scheme for the development of all of the property subject to the restrictions, and (2) there had been a radical change in the character of the neighborhood which had destroyed the essential object of the restrictions. The Greenville County Court of Common Pleas concluded that the plaintiff's contention was not that there was a breakdown of the general scheme within the residential area but that the adjoining and nearby property had increased in commercial development. Relying on the case of *Martin v. Cantrell*[32] the court found that the plaintiffs could not base their cause of action on changes of conditions outside the restricted area, or even small violations within the restricted area.[33] Great injustice would occur, the court reasoned, if the plaintiffs were allowed to sell their property to defendants relying on the residential restrictions, and then seek a substantially greater price by selling for commercial purposes.

The court found that the residential restrictions executed in 1951 were valid and enforceable as to all property of the plaintiffs on the residential side of Pleasantburg Drive. Further, the court recognized that an area of commercial development adjacent to a residential area must by necessity have a line of demarcation somewhere and an attempt by the plaintiffs to have the court modify the restrictions rather than void them was not honored. The court refused to let down gradually the restrictive bars, commenting that, without protective covenants business encroachments on the residential property would be gradual, steady and cancerous.

32. 225 S.C. 140, 81 S.E.2d 37 (1954).
33. Pitts v. Brown, 215 S.C. 122, 54 S.E.2d 538 (1949).

IV. EASEMENTS

A. *Transferability*

Douglas v. Medical Investors, Inc.[34] was a declaratory judgment to determine whether the defendant had an easement for a driveway across plaintiff's property. The lower court held that the reservation of an easement was ineffective and nontransferable and the decision was appealed.

The facts were that one McCulla had sold frontage property in a commercial area to Threadgill reserving an easement to himself in the form of a joint driveway. Threadgill then conveyed to the plaintiff and McCulla conveyed to the defendant.

The South Carolina Supreme Court considered two arguments advanced by the plaintiff. He argued that the reservation of the easement was repugnant to the fee simple title and thus ineffective. He also contended that by the nature of the easement it was not transferable.

The plaintiff had successfully argued in the lower court that in the deed both the granting and habendum clauses conveyed fee simple title and the reservation of the easement which followed the description of the property was inconsistent.[35] The lower court had ruled for the plaintiff on the principle that the granting clause cannot be cut down by subsequent language. The supreme court disagreed, citing *Sandy Island Corp. v. Ragsdale*,[36] which recognized that an easement may be created by reservation in a deed. The joint driveway, in the present case, was no attempt to cut down the fee but only retain a limited use of the property.

The second question considered by the court, the transferability of the easement, turned on whether there existed an easement in gross or an easement appurtenant. The latter is defined as a right to limited use of the land of another which by its nature inheres to the land.[37] However, the gen-

34. 256 S.C. 440, 182 S.E.2d 720 (1971).

35. *Id.* at 445, 182 S.E.2d at 722, Stylecraft, Inc. v. Thomas, 250 S.C. 495, 159 S.E.2d 46 (1968); Groce v. Southern Ry. Co., 164 S.C. 427, 162 S.E. 425 (1931), (distinguished by the court as attempts to create reversions rather than reserve limited use).

36. 246 S.C. 414, 143 S.E.2d 803 (1965).

37. Fisher v. Fair, 34 S.C. 203, 13 S.E. 470 (1890).

eral definition also requires that there be a dominant estate to which the right belongs and a servient estate upon which the obligation rests.[38] To this South Carolina adds a further requirement that for an easement to be appurtenant one terminus must be on the land of the person claiming it.[39] If these requirements of an easement appurtenant can be met it is, generally, freely transferable with the land to which it is appurtenant.[40] On the other hand, an easement in gross is a right which is considered personal in nature[41] and cannot be transferred. In South Carolina the rule has further evolved to such that if an easement in gross is of a commercial character it is transferable.[42] The present case is the latest manifestation of this exception holding that if a joint driveway in a commercial district was not an easement appurtenant it was, nevertheless, transferable because, although in gross, it was of the commercial nature.

B. Width of Right of Way

Patterson v. Duke Power Co.[43] considered the proper interpretation of an easement that the power company had over the land of three property owners. The easement did not specify the width of a right of way but did grant the privilege to the power company of keeping its line clear of trees and other obstructions. In the lower court, the plaintiffs had won a verdict for $1900.00 in damages for trespass by the power company, which had cut valuable timber located a considerable distance from the electrical line. The damages were paid but the plaintiffs sought further a permanent injunction restraining the power company from any future trespass. Since no width of the right of way was specified in the easement, the lower court was requested to determine the proper width. The plaintiff and other witnesses testified that for many years the power company had kept clear on either side of the center of the line an area of twenty to twenty-five feet, on the other hand, Duke asserted a right of way of ninety

38. 25 AM.JUR.2d *Easements and Licenses* §11 (1966).
39. Shia v. Pendergrass, 222 S.C. 342, 351, 72 S.E.2d 699, 703 (1952).
40. 25 AM.JUR.2d *Easements and Licenses* §94 (1966).
41. Brasington v. Williams, 143 S.C. 223, 141 S.E. 375 (1927).
42. *See generally,* Fisher v. Fair, 34 S.C. 203, 31 S.E. 470 (1890), *also,* Annot., 130 A.L.R. 1253 (1941).
43. 256 S.C. 479, 183 S.E.2d 122 (1971).

feet, and a right to cut "danger trees" farther off the center line. The trial judge ruled for the plaintiffs, granting a permanent injunction and limiting the right of way easement to a width no more than twenty-five feet on either side of the transmission line.

On appeal, the South Carolina Supreme Court stated that the proper rule for construction of an instrument which grants a right of way not specifying the width is as follows:

> When no dimensions of a way are expressed, but the object is expressed, the dimensions must be inferred to be such as are reasonably sufficient for the accomplishment of that object.[44]

The court further determined that a reasonably sufficient right of way for the maintenance of transmission lines must take into consideration their height, width and distance apart. Such an easement is necessarily indefinite and especially so where no specific provision provides for the measurement. The injunction of the lower court limiting the right of way to twenty-five feet from the center beneath the transmission line was vacated and without substituting a fixed with the court determined Duke's easement to be that of a right of way "reasonably sufficient in width to properly operate and maintain its transmission lines."[45] Should the power company clear a right of way in excess, the plaintiffs' remedy would be at law for damages caused by trespass.

The "danger tree" provision of the easement is to be interperted according to its plain and ordinary meaning.[46] In other jurisdictions the term has meant "those trees which, by reason of size or condition, and contiguity of complainant's right of way, involve a concrete threat of injury to complainant's transmission or telephone lines, . . . trees which have come to be dangerous since the grant are to be included in the class guarded against."[47] The South Carolina Supreme Court concluded that the power company had a right to re-

44. *Id.* at 486, 183 S.E.2d at 125 (1971), *quoting,* Hamlin v. Pandapas, 197 Va. 659, 90 S.E.2d 829 (1956); *quoting* Buckles-Irvine Coal Co. v. Kennedy Coal Corp., 134 Va. 1, 19, 114 S.E. 233, 238 (1922); *quoting* Atkins v. Bordman, 2 Met. 457, 468 (Mass. 1841).

45. 256 S.C. at 486, 183 S.E.2d at 125.

46. 256 S.C. at 488, 183 S.E.2d at 126, *citing* Bruce v. Blalock, 241 S.C. 155, 127 S.E.2d 439 (1962).

47. Collins v. Alabama Power Company, 214 Ala. 643, 647, 108 So. 868, 870 (1926).

move as danger trees any and all trees which would endanger the proper operation of the transmission lines, whether such trees were within or without the normal right of way necessary for the maintenance of the transmission lines.

V. BOUNDARIES

A. Quieting Title

The case of *Dillard v. Blackman*[48] was appealed to the South Carolina Supreme Court from an action to quiet title. The parties to the action had a common grantor, who in 1910 sold land designated as Lot 4 to Ellen Good, through whom plaintiff had taken title by inheritance. In 1935, the defendant bought the adjoining lot, No. 3, at a foreclosure sale. Both the lots were delineated upon a plat prepared for the common grantor in 1910. When Ellen Good took title to Lot 4 in 1910, she planted a hedge along the boundary adjacent to Lot 3, and at the time of suit the hedge was 60 feet long and about four or five feet wide.

Neither party knew the exact location of the line between the two lots, nor did it come into dispute until the plaintiff employed a surveyor who located the boundary line according to the plat and consistent with all deeds. Thereafter, a suit was commenced in which the plaintiff alleged ownership of the strip on which the hedge was located on the theory that the boundary between the lots had been acquiesced in or fixed by a mutual understanding of the parties at a different location from the boundary line set forth in the deed. In support of this contention, testimony was heard that the parties on either side of the hedge from time to time had trimmed it and that defendant, in Lot No. 3, had constructed a fence on her side of the hedge. This evidence was countered by defendant's explanation that the fence was to enclose a dog rather than establish a boundary line. More damaging to the plaintiff was the testimony by the defendant that she had brought to the attention of the plaintiff the fact that the hedge was over the line and all mortgages out of the plaintiff had described the property in conformity with the plat and the deeds.

The findings of fact on the issue of acquiescence had been made in the lower court by the master in equity and

48. 258 S.C. 158, 187 S.E.2d 643 (1972).

were confirmed by the circuit court in favor of the defendant. The South Carolina Supreme Court, relying on the case of *Harrison v. Lanoway*,[49] held that these findings of fact were binding since its function is not to weigh the evidence if the conclusion may be reasonably supported. In the case of *Klapman v. Hook*,[50] title was held to have been acquired by acquiescence and mutual intention on undisputed facts which raised a presumption in favor of the alleged boundary line. In the present case, however, the court found the evidence in dispute and affirmed the judgment of the lower court without upsetting its findings of fact.

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49. 214 S.C. 294, 52 S.E.2d 264 (1949).
50. 206 S.C. 51, 32 S.E.2d 882 (1945).