

property and agreed that the track bed would serve as the required right-of-way, a use for which it was entirely suitable.

This testimony showed Blanton, in the presence of others, to have said in effect that the tract bed would be the right-of-way (pointing to it), and that the others had assented to Blanton's proposal.

The fact that the track bed was appropriate as a right-of-way, that the parties had agreed it would be the right-of-way, and that the plaintiff's had used it as a a right-of-way until recently prevented from doing so, all constituted the plaintiffs' evidence that the track bed had been designated and accepted as such.

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The defendants countered that some other route had once been used for a right-of-way and that the track bed, at its terminus on the road, lay across the property of the Tates and not within the subdivided property.

The plaintiffs' and the defendants' testimony were in conflict as to all these matters.

The Court, under appropriate charges, instructed the jury to decide whether there was a right-of-way and what was its location. The jury found that a right-of-way existed and that it was along the track bed.

The defendants objected to the testimony regarding the meeting with Blanton, but the Court admitted it. They now ask for a new trial on the ground that the Court erroneously admitted hearsay evidence, stating, in exception one (1) "admission of hearsay testimony by the plaintiffs of alleged conversation with G. E. Blanton,