

the hour and the Cooper Street car is due seven minutes after the hour. In order for the English Ave., car to cut off the White City car, the Cooper Street car would have to be ahead of time, that is the English Avenue car would have to be ahead of time. If the White City car was on time at 12:05, the English Ave, car would have to get there before that time to cut it off. That happens quite often. I do know that the car that Mathis and Hollis were running did come into town ahead of time very often, especially if it is on a relief trip. I have known it to be four or five minutes ahead of time."

The Court admitted this testimony over the objections above made and in doing so committed error for said reasons. This was prejudicial to the defendant, because it was material to his defense to show, as sworn to by the conductor and motorman that the English Ave. car reached the corner of Broad and Marietta, Streets at 12:07 and it misled the jury to admit evidence tending to show that at other times this same car run by Mathis and Hollis reached the City ahead of time. Nor would it be material for the purpose of contradicting the motorman who swore that he did not run ahead of time any time for whether he run ahead of time at other times would be immaterial, and a witness can be impeached only as to misstatements of fact material to the issues in the case.

52. Because the Court permitted, at the instance of the solicitor and over the objection of the defendant, made when the evidence was offered that same was irrelevant, immaterial and incompetent, the witness Henry Hoffman, to testify as follows:

" I am an Inspector for the Georgia Railway and Power Co., I know Mathis, the motorman who runs on the English Ave. car, He is under me a part of the day. He was under me on April 26th, from 11:30 A. M. to 12:07 P. M. Under the schedule, his car is due at the junction of Broad and Marietta Sts., at 12:07. Prior to the beginning of this trial, I have known Mathis car to cut off the Fair Street car. Under the schedule for the Fair St. car, it arrives in the center of town, junction of Broad and Marietta at 12:05. At the time Mathis was running ahead of this