

EXCEP

in his belief that his verdict was in no way affected by the demonstration during the progress of the trial or by that which subsequently occurred while the jury were considering their verdict. But the question is not whether in effect the jurors were influenced by this demonstration, but were the demonstrations calculated to influence the jurors in their action." And the court proceed to cite the Wolfolk case, 81st Ga., 551 and the case of Smith vs Lovejoy, 62nd Ga., 392, in which the court held in fact that the affidavits of jurors did not clear up such a matter, as it was impossible for them to tell what had influenced their minds.

Plaintiff in error submits that the decision in the case at bar is contrary to the decision in the Collier case, in the Wolfolk case and in the case of Smith vs Lovejoy, and as neither of said decisions are quoted or referred to in the opinion, - plaintiff in error respectfully submits that they were overlooked by the court.

19. Plaintiff in error respectfully submits that the court overlooked the facts stated in ground 89 of the motion which was referred to and argued on page 198 of the printed brief of plaintiff in error, which refers to the testimony of the witness Owens, to the effect that he ran on route 8 of the street railway in Atlanta, from White City to Howell Station; that he was due in town at 12:05, this being ahead of the schedule of Cooper Street and English Avenue two minutes; that he has known the English Avenue and Cooper Street cars to get to the junction of Marietta and Broad Streets ahead of his car; that the English Avenue car is due there at 12:07 and the witness' schedule was due at 12:05; that he has known the English Avenue car to get there as much as two minutes ahead; that he has known this to occur after April 26th, which was the day of the tragedy; but that he did not know whether it ever occurred prior to that time.

Plaintiff in error submits that this testimony of Owens stands on a ground distinct and apart from the testimony of the other street car men to the effect that at and prior to the day of the tragedy, the street cars on this line may have run ahead of schedule time. Head note 6 of the decision and the corresponding portion of the opinion deals with this subject, and it uses the language that it was competent for the state to show that in fact the car on the line travelled by the girl in going from her home to the factory frequently arrived at the point in question several minutes