

The Court permitted this testimony to go to the jury over the objections above stated and in doing so committed error for the reasons stated. Movant contends that this was prejudicial to the defendant because it was a material matter to determine at what time his car got to Marietta and Broad streets on the day of the murder, and it confused and misled the jury to hear testimony as to when he got there upon days other than the day of the murder.

51. Because the Court permitted the witness J. C. McEwen, at the instance of and over the objection of defendant that the same was immaterial, incompetent and irrelevant, to testify:

"I am a street car motorman. Previous to April 26th I ran on the Cooper Street route something like two years. On April 26th, 1913, I was running on Marietta and Decatur Streets. The Cooper Street car or English Ave. car run by Hollis and Mathis was due in town at seven minutes after the hour; the car I was running was due at 12:10. The White City car got into the center of town at five minutes after the hour. About April 26, 1913, the Cooper Street car or English Ave. car frequently cut off the White City car due in town at 12:05. The White City car is due there before the English Ave. car; it is due five minutes after 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 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 ran 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 & 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