

the center of town, junction of Broad and Marietta, at 12:05. At the time Mathis was running ahead of this Fair Street car, which is due at 12:05 at the junction of Marietta and Broad Sts., the Fair Street car would be on its schedule. I have compared my watch with Mathis' watch prior to April 26th. There was at times a difference of from 20 to 35 or 40 seconds. We were both supposed to carry the right time. When I compared my watch with Mathis' I suspect mine was correct, as I just had left it the day I looked at Mathis' watch, and mine was 20 seconds difference, and I had gotten mine from Fred Williams that day. His watch was supposed to compare with the one at the barn. I called Mathis' attention to running ahead of time once or twice that I know of. Men coming in on relief time at supper and dinner, coming to the junction of Broad and Marietta, customarily come in 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.

53. Because the Court permitted the witness J. M. Gantt, over the objection of the defendant, made when the evidence was offered that the same was irrelevant and immaterial, to testify substantially as follows:

"The clocks of the pencil company were not accurate. They may vary all the way from three to five minutes in 24 hours."

The Court admitted this testimony over the objections made and in doing so committed error, for the reasons stated.

This was prejudicial to the defendant, because whether the clocks were or were not accurate on April 26th was material to his defense. The witness Gantt had not worked at the factory for three weeks and the fact that the clocks were not keeping accurate time three weeks before the trial was immaterial, and the evidence thereon tended to mislead and confuse the jury. Gantt had not worked at the factory during the three weeks just prior to the crime, and his testimony as to the clocks related to the time he did work at the factory.

54. Because the Court permitted the witness Scott to testify in behalf of his Agency, over the objection of the defendant, that the same was irrelevant immaterial and incompetent, substantially as follows: