of the track from a point 110 yards west of the crossing, far beyond where the body was found, before the east bound train passed them. If the deceased had been proceeding down the track then they would have seen him, but he was not seen—there was his well-known usual custom to avoid the tracks and to cross at Kenilworth Avenue going south to his home, there was the fact that the train was running at between 25 and 30 miles an hour, so that the interval of time between the crossing and 300 yards east of it was not more than 23 or 25 seconds, a space easily permitting of a body being carried that distance forward before striking the ties or rails. It was for the jury to determine, and it cannot be said that there was not reasonable evidence to support their finding. At the same time, when the east bound passenger train was nearing the crossing from the west, a freight train on the north or west bound track was nearing it coming from the east. The engines of these two trains passed each other a short distance to the east of Kenilworth crossing. The freight train gave all the statutory signals for the crossing while the passenger train gave none. What in all likelihood happened was that the deceased, having reached the north side of the crossing, and hearing and seeing the freight train, concluded, as he reasonably might, that he could cross before it reached the crossing, did cross the north track and go upon the south track, and not hearing or noticing the passenger train was struck by it. At this time Lustie and Glanfield's view of the crossing would be obscured by the train so that they could not see the deceased just at that moment. It was said that this train was somewhat late on this occasion, and the deceased, who was in the habit of crossing at the same hour, may have supposed that it had already passed, and so have devoted his attention entirely to the freight train.

The result is that the appeal fails, and it should be dismissed with costs.

GARROW, J.A., gave reasons in writing for the same conclusion.

MACLAREN and MAGEE, JJ.A., also concurred.

MEREDITH, J.A., dissented, for reasons stated in writing. He was of opinion that as the case now stood, it was not distinguishable, in principle, from Wakelin v. London and South-Western R.W. Co., 12 App. Cas. 41, a case of supreme author-