

pany's works not earlier than 5.30 o'clock. He was an elderly man and it does not appear that he was a fast walker. Lustie, a fellow employee of the deceased, who lived a short distance further east of the crossing, and took a shorter route, getting upon the railway tracks more than half a mile west of Kenilworth Avenue, and walking east upon the track to his home, said that it took him, walking quietly, between 25 and 30 minutes to reach his house. At a point 110 yards west of Kenilworth crossing he had a 10 minutes' walk to reach home. In other words, it took him between 15 and 20 minutes on the shorter route to reach a point 110 yards west of the crossing. It is apparent, therefore, that unless the deceased made extraordinary speed on the evening in question he could not, if he took his usual course, have arrived at the crossing until after the first passenger train had crossed. And there is nothing to shew that he went by any other than his usual route.

All the evidence and all the probabilities point to the deceased being struck by the second train, and the jury were well warranted in coming to that conclusion. The testimony is all one way as to the absence of the statutory warnings by those in charge of the second passenger train. Every witness who speaks as to the point is clear that the whistle was not sounded and the bell was not rung for the Kenilworth Avenue crossing—there is no evidence to the contrary, and the finding of the jury upon that question cannot be disturbed. If, therefore, the deceased was struck while on the crossing his death was due to the negligence of the defendants. And the next question, and the sole one presenting any real difficulty, is: Is there evidence upon which the jury might reasonably find that the deceased was at the crossing when he was struck?

The finding of some portions of his head, of some of his clothing, and his dinner at a distance of about 300 yards from the crossing, and of his body 50 yards further on, are no doubt weighty circumstances pointing to the contrary. But are they conclusive in view of all the evidence? Two inferences were open to the jury upon the proved facts and circumstances, either that the deceased was struck at the crossing where he might lawfully be, or that he was overtaken and run down while trespassing upon the track some distance east of the crossing. There were submitted for their consideration a number of cogent facts and circumstances upon which they might fairly and reasonably conclude that he was struck at the crossing.

Not to enumerate all, there was the testimony of Lustie and Glanfield, who were walking on the track and were in full view