

pany's works in a direction which would lead him into Kenilworth Avenue some distance north of Kenilworth Avenue, whence he would proceed south along Kenilworth Avenue, crossing the tracks there in order to reach his house which stands in a field lying south of the tracks and east of Kenilworth Avenue. He was not seen on Kenilworth Avenue or on the railway track, but it appeared that his habit was to cross the tracks at Kenilworth Avenue and proceed south for some distance and then to turn east to his home. It was his usual custom to follow this route and he was never known to walk along the railway tracks, or within the right of way, towards the east from Kenilworth Avenue crossing.

The questions submitted and the answers by the jury were as follows:—

“1. Did the deceased come to his death by contact with a train of the defendants? A. Yes.

2. Was his death occasioned by the negligence of the railway? A. Yes. If so, in what did the negligence consist?

A. Absence of warning in not ringing bell and not blowing the whistle.

3. Where was the deceased when he was struck by the train? A. At the crossing.

4. (As to damages).

5. Which train struck the deceased, if he was struck by a train? A. Express train going east.”

In answer to a question by the learned trial Judge as to the meaning of the last answer the jury explained that they meant the train which did not ring the bell.

A motion to enter judgment for the defendants had been made at the conclusion of the evidence, upon which the learned trial Judge reserved his opinion, and upon motion for judgment upon the answers he reserved judgment. Subsequently, for reasons stated, he directed judgment to be entered for the plaintiffs for the amount of damages (\$2,000) found by the jury.

The evidence establishes beyond question that the deceased could not have been struck by the first of the two passenger trains which passed the crossing not long before the discovery of the body. It is said that both these trains usually pass the crossing between 5.30 and 6 or 6.10 o'clock. The first one is said to be timed to leave Hamilton station at 5.30, and there is the uncontradicted evidence of John Griffith that on the evening in question the first one passed about 5.40 or 5.45 o'clock. The deceased left the Hamilton Iron & Steel Com-