

some 350 yards east of a crossing of the Grand Trunk railway, nearly opposite his house. There was no witness of the accident, but it was shewn on the trial of an action by his widow and children, that shortly after he was last seen an express train and a passenger train had passed each other a little east of the crossing and there was evidence shewing that the latter train had not given the statutory signals when approaching the crossing. The jury found that G. was killed by the passenger train and that his death was due to the negligence of the latter in failing to give such warnings. This finding was upheld by the Court of Appeal.

*Held*, that the jury were justified, on considering the balance of probabilities, in drawing the inference from the circumstances proved, that the death of G. was caused by such negligence. Appeal dismissed with costs.

*D. L. McCarthy*, K.C., for appellants. *McClemant*, for respondents.

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## Province of Ontario.

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### COURT OF APPEAL.

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Full Court.]

REX v. JESSAMINE.

[Jan. 16.

*Murder—Insanity no defence except when no capacity to understand nature of act—Defective inhibition not ground for acquittal.*

The prisoner was tried on a charge of murder before Mr. Justice Riddell and a jury, at Toronto, November 13, 1912. It appeared that the prisoner had watched for one Lougheed upon the street and shot him several times, killing him almost instantly. The defence was insanity. The medical evidence was that the prisoner was insane, incurably so, but that he understood the nature and quality of the act and that it was wrong in the sense that it was forbidden by the law, but that he had lost the power of inhibition.

Mr. Justice Riddell in his charge to the jury, said:—"It is not the law that an insane man may kill whom he will without being punished for it. It is not the law that an insane man may kill another and escape punishment simply because he is insane. There have been hundreds of insane persons who have