

similar inquiry in *Jubber v. Jubber*, so here such an inquiry is premature; it may be pursued when the exigency arises.

The matter now to be decided is as to the present right of the applicant. All that I decide is that under the existing state of affairs the applicant is entitled to one-sixth of the income from year to year, and that he is not entitled to be paid now any part of the corpus.

The applicant will pay the costs of all parties; and these until paid will be a lien upon the money (interest or principal), to which he may be or become entitled from this policy. Had the application been granted, I think I should have directed him to pay the costs—it is for his advantage alone.

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JUNE 28TH, 1907.

C.A.

MOIR v. CANADIAN PACIFIC R. W. CO.

*Railway—Injury to and Consequent Death of Person Attempting to Cross Track—Negligence—Failure to Give Warning of Approach of Train—Findings of Jury—Admission of Deceased that he Ran into Train—Contributory Negligence—Action by Father and Administrator—Failure to Prove Pecuniary Loss—Nonsuit.*

Appeal by defendants from order of a Divisional Court (9 O. W. R. 22) dismissing a motion to set aside the verdict and judgment for plaintiff for \$2,000 in an action by Forbes Moir to recover damages for the death of his son Byron by the alleged negligence of defendants in running one of their trains across a farm belonging to plaintiff in the township of Garafraxa. The jury found that defendants were guilty of negligence by not giving proper warning on approaching the crossing, and the Divisional Court (MACMAHON, J., dissenting), held that there was evidence sufficient to sustain the verdict. The deceased was a lad of 18 working on his father's farm; he was running down a hill towards the crossing when the train ran over him or he ran into the train. MACMAHON, J., was of opinion that on the admission made by the deceased (after the injury which