or maximum performance an increased plant was not in itself sufficient to render the whole ultra vires; it would have been otherwise if such increased plant had been required to carry on a new or different business from that then being carried on by the defendant company. As it was, the supplying such additional plant would fall under the head of "management" and would therefore be within the general scope of the defendants' authority.

3. There was no need here of the corporate seal although the contract was an executory contract; and the plaintiffs were entitled to recover so far as they had given orders for the couplers under the contract.

W. Cassels, K.C., and *W. D. McPherson*, K.C., for the defendants, appellants. *J. H. Moss* and *C. A. Moss*, for plaintiffs.

Full Court.] [Jan. 28.

HANLY *v.* MICHIGAN CENTRAL RY. CO.

Railway—Injury at highway crossing—Negligence—Findings of jury—Train "behind time."

In an action to recover damages for the death of a man who was struck by a train of the defendants at a highway crossing, the evidence as to whether the statutory signals were given was conflicting, and, while it was shewn that the train was about ten minutes late, there was no evidence as to the cause of the delay, nor was it shewn that the deceased was misled thereby. The jury found that the defendants were guilty of negligence, which consisted in the train being "behind time"; but they did not answer a question put to them as to whether the bell was ringing.

Held, that no actionable negligence was shewn or found, and the action should be dismissed; it was not a case for a new trial.

Sec. 215 of the Dominion Railway Act, 1903, did not aid the plaintiffs.

Judgment of BOYD, C., reversed.

Hellmuth, K.C., and *Cattanach*, for defendants, appellants. *S. White* and *E. Meek*, for plaintiffs.