

essential for its purposes: *Campbell v. Community General Hospital, etc.*, of the Sisters of Charity, Ottawa, 20 O.L.R. 467. Here the contract is an executed contract. The water has been supplied. It is true that it has not been supplied to the city itself, but it has been supplied on the direction of the council to those requiring it. There is no foundation for the distinction which Mr. Beament seeks to draw, that the operation of the rule in question is to be confined to cases in which the goods are to be supplied to the municipality itself. The absence of a seal and of any formal contract, therefore, affords no reason why the municipality should not meet its just obligations.

The remaining objection is, I think, based upon a misconception. The estimates do contain a sum of \$9,000 for water supplies. This is equivalent to the sum covered by this arrangement, \$750 per month. The object of the provision of the statute relied upon is to prevent the council incurring obligation without providing means for payment. Here the means for payment are provided, and it appears to me to be entirely beside the question to suggest that I should enter into any controversy as to whether this is a sum which should be charged against the water-works and water-rates. With these matters neither the dairy company nor the Court has any concern.

In all aspects the action fails, and I think should be dismissed with costs.

MIDDLETON, J.

OCTOBER 22ND, 1914.

DUNN v. WABASH R.R. CO.

*Railway—Death of Servant—Fireman on Locomotive Engine—
Fall from Train on Bridge—Negligence—Cause of Death—
Width of Bridge—Fireman Leaning from Train—Evidence—
Findings of Jury—Nonsuit.*

Action by the widow and infant child of one Dunn, who was killed while in the service of the defendants as a locomotive engine fireman, to recover damages for his death.

The action was tried before MIDDLETON, J., and a jury, at St. Thomas.

L. F. Heyd, K.C., for the plaintiffs.

H. E. Rose, K.C., for the defendants.