

the emergency repairs to the plaintiffs' telegraph line between Tweed and Bannockburn? To do so would, doubtless, seriously interfere with their duties as trackmen. The telegraph lines which these trackmen are required to repair by this agreement are clearly telegraph lines along the railway company's right of way, which is being traversed by the trackmen. Breaks in telegraph lines used for the operation of railway trains, require repair at the earliest possible moment. If a telegraph line is so remote from the railway track that a break in it cannot be promptly repaired temporarily by the railway trackmen, it must fail to furnish reasonable telegraph service to the railway. The telegraph service contemplated by the parties to be furnished under the terms of said agreements, was a service reasonably necessary for the proper working of the railway, namely, a service along the railway's right of way. The plaintiffs' line between Tweed and Bannockburn does not, I think, meet their contractual obligation, and because of such default on the part of the plaintiffs, the defendants have been obliged to build and maintain a telegraph line along their right of way between those two points. The cost of this line was \$4,509.24, and the defendants claim that sum by way of damages, and also the sum of \$1,127, being interest thereon, and \$1,100 costs of maintenance for the 5 years since their erection of the line, making in all \$7,736.24. The plaintiffs at the trial did not challenge the correctness of these figures. I therefore find that the defendants are entitled to damages to the amount of \$7,736.24 in respect of plaintiffs' failure to build and maintain a telegraph line between Tweed and Bannockburn. On payment of this amount the line will become the property of the plaintiffs, subject to the rights of the defendants under the agreements; until payment of this sum the plaintiffs to continue liable to pay to the defendants the cost of maintenance of the line and interest on the sum of \$4,509.24.

As to item (c), that the plaintiffs are bound to maintain the poles that were erected on the defendants' right of way at the date of the agreements, I fail to find in these agreements any obligation on the part of the plaintiffs to keep the poles in repair. As to the pole line between Deseronto and Deseronto Junction, the defendants sold to the plaintiffs the wires, insulators, and arms then erected, but retained the property in these poles. The plaintiffs were not bound by the agreement to maintain those wires on these poles, and could have placed them on other poles not the property of