

railway company and over which this right can be legally exercised, provided always that in erecting such poles or any of them the said telegraph company shall not do or cause any damage or injury to the track or roadbed of the railway company," and then, after providing for payment by the telegraph company of the cost of certain wires, arms, and insulators, the agreement proceeds as follows:—

"In consideration of the premises, the telegraph company also agrees to furnish a wire and instrument worked by sound for the use of the railway company at each railway station free of charge, and to keep the same in repair, and the said wire and instruments may be used by the telegraph company for commercial business, but railway business is to have the preference over this wire.

"The trackmen of the railway company are to make all usual and ordinary repairs necessary to keep the telegraph lines in working order until the telegraph company's repairer can reach the place where damage has occurred, the telegraph company furnishing tools for this work."

Interpreting the plaintiffs' obligation under this covenant in the light of the surrounding circumstances and by a reference to the whole agreement, it seems to me that its fair meaning is that *pari passu* with the extensions of the railway the telegraph lines were to be extended along the railway right of way and in position to furnish the railway company with telegraph service, which, according to common knowledge, is absolutely necessary for the safe and efficient operation of train service. By the agreement the railway company granted to the telegraph company the right to erect and maintain pole lines along the railway's right of way, and the railway company covenanted that their trackmen would make all usual and ordinary repairs necessary to keep the telegraph lines in working order until the telegraph company's repairers could reach the place where the damage had occurred. The telegraph line which the plaintiffs contend meets their obligation as regard telegraph service between Tweed and Bannockburn, does not proceed along the defendants' right of way, but, in order to serve the general public, takes a long and circuitous route, a considerable distance from the line of railway between Tweed and Bannockburn. How could the defendants' trackmen, who, I assume, are men daily and hourly required to proceed along the railway track in order to examine its condition and to make needed repairs thereto, how could they make