

of justice, upon a similar contract, gave to it a different construction from that which the parties had put on it."

For these reasons, I am of the opinion that the plaintiffs are not entitled to recover the moneys in question, and that their action fails.

As to the counterclaim, the defendants claim: (a) damages because of the plaintiffs' failure to maintain their telegraph line in working order; (b) damages for breach of covenant to construct and maintain a wire and instrument worked by sound for the use of the defendants, between Tweed and Bannockburn; (c) a declaration that the plaintiffs are bound to maintain the poles that were erected on the defendants' right of way at the date of the agreement; (d) a declaration that poles erected by the plaintiffs on the defendants' right of way in excess of those mentioned in the agreements are the property of the defendants, subject to the plaintiffs' right to string wires thereon.

As to item (a) of the counterclaim, namely, damages because of failure on the part of the plaintiffs to keep their telegraph lines in working order, the evidence shews that for about 3 years, namely, from 1903 to 1906, the telegraph lines were allowed to fall into disrepair, thereby occasioning inconvenience and expense to the defendants in operating their lines. The defective condition of the telegraph lines delayed the movements of trains and caused a greater consumption of coal and also loss in wages. Mr. Rathbun admitted that it was difficult to estimate the damages thus occasioned to the defendants, but swore that the actual loss in money would be from \$300 to \$500 a year. I award the defendants \$900 damages for this item of their counterclaim.

As to item (b), namely, damages because of the plaintiffs not erecting and maintaining a telegraph line between the stations Tweed and Bannockburn: by the agreement the railway company granted to the telegraph company the right forever "to erect their lines of poles along the right of way of said company for the carrying of telegraph, telephone, or other wires, on the right of way of the said railway company (including the right of running all or any of the said wires into all the stations and offices of said railway company and also including the goodwill and assistance of the agents and officials of the railway company) and all its extensions and branches built or to be built and all other railway lines leased or which hereafter may be leased by the