completed within five years after the location of said section, the rights herein granted shall be forfeited as to any such uncompleted section of said road."

By the terms of the grant no right to ground for station purposes attaches until the right of way is secured by a compliance on the part of the railroad company with the provisions of the act, for the grant is of "ground adjacent to such right of way, for station-buildings," etc. And by section 4 it is provided that the company desiring to procure the benefits of the act shall, within a certain designated time, "file with the register of the land office for the district where such land is located a profile of its road, and upon approval thereof by the secretary of the interior the same shall be noted upon the plats in said office, and thereafter all such lands over which said right of way shall pass shall be disposed of subject to such right of way," etc.

So far as the evidence in this case shows, the only map filed by the California Southern Railroad Company with the register of the land office where the land in question is located, pretending to give a profile of its road, was filed September 30, 1885, which map, the evidence shows, received the approval of the "department of the interior" on December 30, 1885. But before it met with such approval, and prior to the time it was filed with the register of the local land office, Bugbee settled upon the fractional part of section 16, including the 20 acres in controversy, and had filed in the local land office his declaratory statement therefor. His settlement initiated a right which was followed up by final proof and payment for the land, in consideration of which the government issued to him, as has been seen, its certificate of purchase, and subsequently its patent, which latter related back to the date of his settlement, and perfected in him the title as of that date. The trouble with the railroad company is that it did not pursue the law, the provisions of which are plain enough. The first thing it did, so far as the evidence in the case shows, was to file with the register of the local land office a map of the station grounds desired, before it had secured the right of way for its road under the act, by filing and obtaining the approval of the secretary of the interior of the profile of its line. As already observed, the grant contained in the act of congress of ground for station purposes is of ground adjacent to the right of way. Manifestly, before any right can arise out of such grant, the right of way must be secured, which can only be done by a compliance with the provisions of the law conferring it. As the right of way had not been thus secured by the California Southern Railroad Company at the time it filed the map for the station grounds desired, with the register of the local land office, such filing initiated no right to that ground. The doctrine of the Yosemite Valley Case, 15 Wall. 77, and kindred cases, relied on by counsel, does not aid the defendant. In cases like the present, "the first in time in the commencement of proceedings for the acquisition of the title, when the same are regularly followed up, is deemed to be the first in right." Shepley v. Cowan, 91 U. S. 338; Sturr v. Beck, 133 U. S. 550, 10 Sup. Ct. Rep. 350. I see no escape from the conclusion that there must be judgment for

the plaintiff, without regard to the point made in his behalf, that the evidence shows that the ground claimed for station purposes is not adjacent to its road as located and built.

There will be judgment for plaintiff.

CHICAGO, ST. L. & N. O. R. CO. v. PULLMAN SOUTHERN CAR CO.

(Circuit Court of Appeals, Fifth Circuit. June 13, 1893.)

No. 130.

CONTRACTS—CONSTRUCTION—LIMITATION OF ACTIONS—SLEEPING-CAR AND RAILROAD COMPANIES.

A contract between a sleeping-car company and a railroad company provided that "the railway company shall repair all damages to said cars of every kind occasioned by accident or casualty." *Held*, that the fact that this provision was found in an indenture embracing contracts of letting and hiring such cars did not render a suit brought thereunder to recover the value of a car destroyed by fire a suit for a rent charge or arrearage of rent, which would be barred in three years under the Louisiana Code.

In Error to the Circuit Court of the United States for the Eastern District of Louisiana.

At Law. Action by the Pullman Southern Car Company against the Chicago, St. Louis & New Orleans Railroad Company to recover damages on account of the destruction by fire of two sleeping cars, the "Louisiana" and the "Great Northern," while on the premises of the defendant. There was a verdict and judgment for plaintiff. Defendant sued out a writ of error to the supreme court, which, on March 2, 1891, reversed the judgment, and remanded the case for a new trial. 11 Sup. Ct. Rep. 490, 139 U. S. 79. The plaintiff then discontinued the case as to the car "Great Northern," and afterwards obtained a verdict and judgment for the value of the "Louisiana." From this judgment defendant now brings error. Affirmed.

The action was based upon a written contract between the two corporations, dated April 5, 1879, and showing that the plaintiff was engaged in the business of operating sleeping and drawing-room cars, which it hired under written contracts for a term of years to be used and employed on the lines of railroad companies, receiving therefor income and revenue by the sale to passengers of seats, berths, and accommodations therein. The contract then set out various stipulations by which these purposes were to be carried out, and under which the cars now in question came into possession of the defendant. Among these stipulations were the following: Each of the plaintiff's cars was to be manned, at its own cost, by one or more of its employes, as might be needful for the collection of fares and the comfort of passengers; such employes to be subject to the rules and regulations established by the defendant for its own employes. "In consideration of the use of the aforesaid cars," the defendant was to haul them on passenger trains on its own lines of railroad, and on passenger trains on which it might, by virtue of contracts or running arrangements with other roads, have the right to use them, "in such manner as will best accommodate passengers during the use of said cars." By article 6 of the agreement, all necessary lubricating material, ice, fuel, and material for lights were to be supplied, and the washing and cleansing of the cars furnished under the contract to be done, by the defendant at its expense, which should also renew and replace, as often as necessary, links, pins, bell cord, and couplings for air-brake hose, without charge to the plain-