damages for injuries resulting from its fault or negligence, or from the fault or negligence of any person delegated with authority to represent it. The true construction of the clause requires the words "any person" to be limited so as not to include the person injured. Thus construed, the clause would read:

"Where such injury resulted from the act or omission of any person (except the person injured) done or made: (1) in obedience to any rule, regulation, or by-law of such corporation; or (2) in obedience to the particular instructions given by any person delegated with the authority of the corporation in that behalf."

This construction makes the statute harmonious, and gives effect to every word and member of it. Under this construction, the effect of this clause is to prevent the corporation from setting up the defense that the injury to the plaintiff was caused by the act or omission of a coemployé, when such coemployé was acting in obedience to the rules, regulations, or by-laws of the corporation, or in obedience to the particular instructions given by any person delegated with the authority of the corporation in that behalf. In my opinion this clause of the statute ought to receive no broader construction. Thus construed, the paragraph is insufficient. The injury complained of did not result from the act or omission of a fellow servant, done or made in obedience to any rule, regulation, or by-law of the corporation, or in obedience to the particular instructions of the defendant's foreman, nor is it shown to have resulted from any fault or want of care of either. The demurrer is therefore sustained, to which ruling the plaintiff excepts.

CENTRAL TRUST CO. OF NEW YORK v. EAST TENNESSEE, V. & G. R. CO. (OLIVER, Intervener).

(Circuit Court, N. D. Georgia. June 1, 1895.)

No. 688.

NEGLIGENCE—INEVITABLE ACCIDENT.

An engine was thrown from the track by running over some calves which sprang upon the track almost immediately in front of the moving engine, which ran for some distance along the ties, and then turned over. *Held*, that the receivers operating the road could not be held responsible for injuries to the engineer primarily caused by this inevitable accident, even though they had failed to exercise due care in selecting the brakemen, whose inefficiency was alleged to have caused the overturning of the engine.

This was an intervening petition filed by J. W. Oliver, in the suit of the Central Trust Company of New York against the East Tennessee, Virginia & Georgia Railroad Company, claiming damages for personal injuries. The petition was referred to a master, who reported adversely to the petitioner. Exceptions to the master's report were duly filed.

King & Anderson, for intervener.
De Lacy & Bishop, for defendant.

NEWMAN, District Judge. There is one conclusion to which the special master came in this case which must control it independently of questions raised by other exceptions to the master's report. That conclusion is that the injury to the intervener was the result of an unavoidable accident, against which no sort of diligence could have been effective. The accident which resulted in the injury for which this suit was brought was caused by the engine striking some calves on the track, causing the derailment of the engine and its overturning, by which the intervener, who was the engineer, was injured. It appears from the testimony of the intervener that the calves sprang on the track almost immediately in front of the moving engine,—"in the headlight," as he expressed it. The engine ran over the calves, and was caused thereby to mount the rails, and, after running some distance on the cross-ties, to leave the track, and turn over.

It has already been determined in this case, and also in former cases where the same question was raised, that an employé, such as this engineer, could not recover against a receiver of a railroad for an injury caused by the negligence of a fellow servant, as a brakeman would be to the engineer. The right to recover, after the adjudication of this question, has been placed by the intervener on the ground that the brakemen, whose negligence it is claimed was the cause of the overturning of the engine, were unskillful and incompetent, and that the receivers were responsible for having such men in their employ. The master has found this question of the receivers having incompetent employés against the intervener, and has reported that the evidence does not sustain the charge. It is not altogether certain from the evidence, as reported by the master, that he is correct in this view, and it is not entirely clear from the evidence that the men were fitted for the positions or that due care was exercised in their selection. It may be, however, that the finding of the master is not, on the other hand, so clearly erroneous as to justify the court in sustaining the exception on this ground, if it stood alone. But, be that as it may, and independently of it, it would be mere surmise to say that the negligence of the brakemen at the time or any general incompetency or unskillfulness on their part was the cause of the engine turning over and injuring the intervener. It is not contended, as I understand it, that the derailment of the engine could have been prevented even if the brakes had been applied in the quickest and most skillful manner, but that the engine would not have upset if this had been done. It can only be conjectured that the highest diligence and the greatest skill on the part of the brakemen might have prevented the unfortunate result. Certainly, from this evidence and the report of the special master, the court would not be justified in sustaining the exception, and setting aside the report, so far as the report is made on the ground that this was an unavoidable accident, for which the receivers were not responsible. The exceptions will be overruled, and the report confirmed.

MUSE et al. v. ARLINGTON HOTEL CO.

(Circuit Court, E. D. Arkansas. June 1, 1895.)

1. PUBLIC LANDS—SPANISH GRANT.

The regulations of Gov. O'Reilly in the province of Louisiana of February 18, 1770 (section 12), provided that all grants should be made in the name of the king by the governor general, who would at the same time appoint a surveyor to fix the bounds thereof, both in front and depth, in the presence of the judge ordinary of the district and of two adjoining settlers, who should be present at the survey; that such four persons should sign the procés verbal made thereof; that the surveyor should make three copies of the same, one of which should be deposited in the office of the scrivener of the government, another directed to the governor general, and the third to the proprietor, to be annexed to the title of his grant. *Held*, that no title was conveyed by a paper purporting to be a Spanish grant, made while such regulations were in force, by the governor of such province, "of a tract of land of one square league, situated in the district of Arcansas, on the north side of the River Ouachita, at about two leagues and one-half distant from said River Ouachita, and understanding this land is to be measured so as to include the site or locality known by the name of 'Hot Waters,' as is besides expressed by the figurative plan and certificate of said surveyor, Trudeau, above named; and recognizing this mode of measurement, we approve of this survey, using the faculty which the king has placed in us, and assign in his royal name unto the said" grantee "the said league of land," etc., in the absence of any actual survey on the ground, and the filing of a copy thereof in the office of the scrivener of the government, and an actual putting of the grantee in pedal possession according to the form and proceedings then prevailing in Spain and such province.

2. LIMITATIONS—ACTION TO RECOVER LAND GRANTED BY SPAIN.

Act May 26, 1824 (4 Stat. 52), entitled "An act enabling the claimants of land within the limits of the state of Missouri and territory of Arkansas to institute proceedings to try the validity of their claims," permitted all persons claiming under French and Spanish grants to file petitions in various courts named, in order to have their titles confirmed, and provided that any claim to lands "within the purview of this act which shall not be brought by petition before the said courts within two years from the passing of this act, or which, after being brought before the said courts, shall, on account of the neglect or delay of the claimants, not be prosecuted to a final decision within three years, shall be forever barred," etc. Such act was several times extended; the last time for five years, by Act June 17, 1844 (5 Stat. 676). *Held*, that such statute bars an action brought in 1894 for a tract of land including the hot springs in the city of Hot Springs, Ark., by the heirs of a grantee of an alleged Spanish grant, dated February 22, 1788.

3. SAME.

Such action is also barred by Act Cong. June 11, 1870 (16 Stat. 149), known as the "Hot Springs Act," which gives all persons claiming title, either legal or equitable, "to the whole or any part of the four sections of land constituting what is known as the 'Hot Springs Reservation,' in Hot Springs county, in the state of Arkansas," an opportunity to institute suit in the nature of a bill in equity against the United States in the court of claims, "and prosecute to final decision any suit that may be necessary to settle the same: provided that no such suit shall be brought at any time after the expiration of 90 days from the passage of this act, and all claims to any part of such reservation upon which suit shall be not brought under the provision of this act within that time shall be forever barred."

4. PUBLIC LANDS—GRANT—ABANDONMENT—PRESUMPTION FROM LAPSE OF TIME.

A claim by a grantee of an alleged Spanish grant, dated February 22, 1788, or his heirs, to a tract of land including the hot springs in the city of Hot Springs, Ark., will be presumed to have been abandoned, in an