

in the Land Department, namely, that the public surveys had been extended over the land, and that other lands had been appropriated to the satisfaction of the grant.

Judgment affirmed.

BOUGHTON v. EXCHANGE BANK.

This court has no jurisdiction to re-examine the judgment of a State court, unless the record shows, affirmatively or by fair implication, that a Federal question, necessary to the determination of the cause, is involved.

MOTION to dismiss a writ of error to the Supreme Court of the State of Pennsylvania.

This was a suit brought in the Court of Common Pleas of Philadelphia, by the American Exchange National Bank, against John W. Boughton, upon two promissory notes, whereof he was the maker. His affidavit of defence, alleging usury, having been declared to be insufficient, judgment was rendered against him, which was affirmed by the Supreme Court of the State. He then sued out this writ.

Mr. Samuel Wagner in support of the motion.

Mr. Thomas Greenbank, contra.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

To give us jurisdiction for the review of a judgment of a State court, the record must show affirmatively, or by fair implication, that some Federal question was involved which was necessary to the determination of the cause. The defence set up in this case was that the notes sued on were void for usury under the laws of New York, where they were made. Judgment was given against the plaintiff in error for want of a sufficient affidavit of defence. This judgment would be right if the affidavit was not such as was required by law or the practice of the court for the presentation of a defence like that relied on. As it is incumbent on him to show by the record, not only that this was not the ground of the decision below, but

that some wrong determination of a Federal question was, — and it has not been done, — we might dismiss the suit without further examination; but on looking into the opinion, which has been sent up with the record, we find that the Court of Appeals based its judgment, which alone we can review, entirely on the fact that the affidavit was not sufficiently specific in its averments to meet the requirements of the rules of pleading applicable to such cases.

It is clear, therefore, that we have no jurisdiction.

Motion granted.

NESLIN v. WELLS.

1. By the laws of Utah in force in the year 1873 a mortgage of lands which is first recorded, if it be taken without notice of an elder mortgage, is entitled to precedence of lien.
2. It is only when the equities are equal that the maxim *qui prior est tempore potior est jure* applies.

APPEAL from the Supreme Court of the Territory of Utah.
The facts are stated in the opinion of the court.

J. G. Sutherland and *J. R. McBride* for the appellant.

Mr. Samuel Shellabarger and *Mr. Jeremiah M. Wilson* for the appellees.

MR. JUSTICE MATTHEWS delivered the opinion of the court.

This is a suit of an equitable nature, brought by Wells, Fargo, & Co., against Neslin and Smith, in the District Court of the Third Judicial District of the Territory of Utah, to foreclose a mortgage of real estate, made by Smith to Kerr, and by the latter assigned to them. Neslin claimed to be a prior mortgagee of the same land, and to be entitled to a lien preferable to that of the complainants.

A decree for the complainants was rendered in the District Court, establishing their mortgage as the first and best lien. A motion for a new trial was made by Neslin. On that motion, a statement in writing, agreed upon as correct, was signed by the attorneys for both parties, and filed and made part of