

among them must be determined by purely equitable considerations.

The only circumstance on which the appellant can rest the claim of his mortgage to a preference over that of the appellee, is that it is prior in date. But the maxim quoted in support of this claim — *qui prior est tempore potior est jure* — only applies in cases in which the equities are equal. That, we have already decided, is not this case. Here equity cannot be satisfied otherwise than by subjecting the appellant to the loss, which has to be suffered by one of the two solely in consequence of his own fault.

Some question was made in argument as to whether the appellees were holders of the mortgage to Kerr for a valuable consideration. But the findings of the court, which are conclusive as to the facts, leave no room for doubt upon the legal conclusion.

We find no error in the decree, and it is accordingly

Affirmed.

VIGEL v. HOPP.

Where the answer is responsive to the allegations of the complainant's bill, they must, to entitle him to relief, be sustained by the testimony of two witnesses, or of one witness corroborated by circumstances which are equivalent in weight to the testimony of another witness.

APPEAL from the Supreme Court of the District of Columbia.

The facts are sufficiently stated in the opinion of the court.

Mr. Saul S. Henkle for the appellant.

There was no opposing counsel.

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

This is a suit in equity begun by the appellee to set aside a deed executed by her to the appellant, on the ground that the deed, though absolute on its face, was intended only as security for a debt, which has since been paid in full. There are numerous allegations of fraud, but the whole scope and pur-

pose of the suit is to establish a trust, and get back the property in that way. The answer denies every allegation of fraud and trust, and insists that the deed was intended as an absolute conveyance, and not as security. This is responsive to the bill, and before the relief can be granted which is asked, these denials must be overcome by the satisfactory testimony of two witnesses, or of one witness corroborated by circumstances which are equivalent in weight to another. 2 Story, Eq., sect. 1528. The appellee is the only witness in support of the bill, and the corroborating circumstances are not, in our opinion, sufficient to overcome the answer. It will serve no useful purpose to enter into analysis of the testimony.

Decree reversed, and cause remanded with instructions to dismiss the bill.

BRADLEY v. UNITED STATES.

It is no objection to the competency of a witness for the government in the Court of Claims that his interest is adverse to that of the claimants, and that a judgment against them may have the effect of establishing his right to the money claimed.

APPEAL from the Court of Claims.

Certain sugars imported in the year 1869 and seized for the owner's alleged violation of the revenue laws, were duly libelled, condemned, and sold. In the District Court, where the proceedings were had, no party appeared praying for an informer's share of the net proceeds, or for the distribution of them. They were paid into the treasury, and by the Secretary of the Treasury in part distributed, that is to say, one-half to the United States, which was covered into the treasury, and one-fourth in equal shares to the collector, the surveyor, and the naval officer of the port. Those officers claimed also the remaining fourth. Bradley and others, each claiming as informer or seizing officer, asserted a right thereto. Bradley brought this suit therefor, April 27, 1872. On May 9 of that year the Secretary ordered that the one-fourth so undistributed