

interesting argument against the rulings in those cases; but we are not convinced they should be overruled."

This court has never until now been called on to decide the question, but in numerous cases it has assumed that the section took effect on the day fixed by the Supreme Court of the State. *Town of Concord v. Portsmouth Savings Bank*, 92 U. S. 625; *County of Moultrie v. Rockingham Ten-cent Savings Bank*, id. 631; *County of Randolph v. Post*, 93 id. 502; *Fairfield v. County of Gallatin*, 100 id. 47; *Walnut v. Wade*, 103 id. 683; *Louisville v. Savings Bank*, 104 id. 469. Under these circumstances we are not inclined to consider the question an open one here while the Supreme Court of the State adheres to its present rulings.

*Judgment affirmed.*

---

SWOPE *v.* LEFFINGWELL.

This court has jurisdiction to re-examine the judgment of a State court involving the right of a national bank to purchase a promissory note secured by a deed of trust upon real estate. A motion to affirm will, however, be granted where that is the only Federal question in the case and the decision below is in recognition of the right.

ERROR to the Supreme Court of the State of Missouri.

This was a suit brought in the Circuit Court of St. Louis County, Missouri, against Leffingwell and the other defendants, to restrain and enjoin the sale of certain real estate in the city of St. Louis, under a deed of trust executed to secure the payment of a promissory note whereof the Atlas National Bank of Boston became the purchaser. The case was ultimately determined by the Supreme Court of the State reversing the decrees of the subordinate courts, and directing that the bill be dismissed. Swope sued out this writ of error.

A motion was made to dismiss the writ for want of jurisdiction, upon the ground that there was no Federal question involved; to which was united a motion to affirm.

*Mr. Philip Phillips* in support of the motions.

*Mr. E. B. Sherzer*, *contra*.

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

We have jurisdiction of this case. The motion to dismiss is, therefore, denied; but as the only Federal question presented on the merits was decided by the court below in accordance with our rulings in *National Bank v. Matthews* (98 U. S. 621) and *National Bank v. Whitney* (103 id. 99), the motion to affirm is

*Granted.*

---

CLARK v. FREDERICKS.

1. A judgment will not be reversed because the court below erred in directing the order in which the evidence was introduced, unless it clearly appears that the complaining party was thereby injured.
2. An objection to matters which was not brought to the attention of the court below will not be considered here.
3. The finding below covering all the issues is conclusive, and where a request for special findings was refused, this court will assume that they were not established by the evidence.

ERROR to the Supreme Court of the Territory of Montana. Davis, having obtained a judgment against Wellington A. Fredericks, sued out a writ of attachment, by way of execution, which Clark, the sheriff of Gallatin County, Montana Territory, levied upon some personal chattels alleged to belong to the judgment debtor, but which his wife claimed were her separate property. This suit was, therefore, brought in the District Court of that county, by her, against Clark and Davis, to recover possession of the chattels, or their value in case the delivery of them could not be had.

There was a judgment for the plaintiff, which was, on appeal, affirmed by the Supreme Court of the Territory. Clark and Davis sued out this writ. The assignment of errors is set out in the opinion of the court.

*Mr. Richard T. Merrick* and *Mr. Martin F. Morris* for the plaintiffs in error.

*Mr. Samuel Shellabarger* and *Mr. Jeremiah M. Wilson* for the defendants in error.