

Opinion of the Court.

SIMMERMAN *v.* NEBRASKA.

ERROR TO THE SUPREME COURT OF THE STATE OF NEBRASKA.

Submitted December 3, 1885.—Decided December 7, 1885.

This court is without jurisdiction over a case brought here on error from a State court, unless it appears in the record that the Federal question was raised in that court before the entry of a final judgment in the case.

This was a motion to dismiss the writ of error for want of jurisdiction.

*Mr. William Leese*, Attorney-General of Nebraska, and *Mr. Enoch Totten* for the motion.

The plaintiff in error in person opposing. *Mr. L. C. Burr* also filed a brief for same.

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

It nowhere appears from this record, either in the application for a change of venue, or in the objections to the admissibility of evidence, to the charge of the court as given, or to the refusals to charge as requested, or in the motion for a new trial, the assignment of errors in the Supreme Court of the State, or the opinion filed in that court, that any Federal question was actually presented for consideration or in any way relied on before the final judgment from which the writ of error has been taken. Such being the case, we cannot take jurisdiction. *Detroit Railway Co. v. Guthard*, 114 U. S. 133; *Brown v. Colorado*, 106 U. S. 95. The fact that, after the final judgment, and in the petition for a writ of error to this court, which seems to have been treated also as a petition for rehearing, a Federal question was presented is not enough. It was so decided in *Susquehanna Boom Co. v. West Branch Boom Co.*, 110 U. S. 57. As was said in that case: "We act on the case as made to the court below when the judgment was rendered, and cannot incorporate into the record any new matter which appears for

## Statement of Facts.

the first time after the judgment, on a petition for rehearing. Such a petition is no part of the record on which the judgment rests."

*The motion to dismiss for want of jurisdiction is granted.*

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## CANNON v. UNITED STATES.

## ERROR TO THE SUPREME COURT OF THE TERRITORY OF UTAH.

Argued November 20, 23, 1885.—Decided December 14, 1885.

The offence of cohabiting with more than one woman, created by § 3 of the act of Congress of March 22, 1882, ch. 47, 22 Stat. 31, in regard to polygamy in the Territory of Utah, is committed by a man who lives in the same house with two women, and eats at their respective tables one-third of his time, or thereabouts, and holds them out to the world, by his language or conduct, or both, as his wives, and it is not necessary to the commission of the offence that he and the two women, or either of them, should occupy the same bed or sleep in the same room, or that he should have sexual intercourse with either of them.

An indictment under that section charged a male person with having unlawfully cohabited with more than one woman, continuously, for a specified time, naming two women, but did not allege that he was a male person, nor that he cohabited with the women as wives, or as persons held out as wives. The statute provides that "if any male person . . . hereafter cohabits with more than one woman, he shall be deemed guilty of a misdemeanor." The defendant pleaded not guilty: *Held*,

1. Under the Criminal Procedure Act of Utah, of February, 22, 1878, Laws of 1878, p. 91, objections taken to the indictment after a jury was sworn, that it did not contain the allegations before mentioned, were properly overruled.
2. The word "cohabit," in the statute, means, "to live together as husband and wife," and its use in the indictment includes every element of the offence created, as above defined; and the allegation of cohabiting with the two women as wives, is not an extrinsic fact, but is covered by the allegation of cohabiting with them.
3. The case of *United States v. Carll*, 105 U. S. 611, distinguished.

This was a writ of error to bring up for review proceedings in the Supreme Court of the Territory of Utah, in the indict-