

OMALY v. SWAN.

{3 Mason, 474}¹

Circuit Court, D. Massachusetts. Oct. Term, 1824.

FORECLOSURE OF MORTGAGE—PROCEEDINGS
FOR DEFICIENCY.

After a foreclosure by a mortgagee he is still entitled to recover the balance of the debt due him beyond the value of the mortgaged premises at the time of the foreclosure.

{Cited in brief in *Bliss v. Weil*, 14 Wis. 39. Cited in *Hunt v. Stiles*, 10 N. H. 469; *Porter v. Pillsbury*, 36 Me. 284.}

Assumpsit {by Michael Omalý against James Swan} to recover the amount of a simple contract debt, due to the plaintiff, for which a mortgage had been given as collateral security. The plaintiff had foreclosed the mortgage and taken possession of the mortgaged premises; and now sought to recover the balance of the debt, deducting 690 the value of the mortgaged premises at the time of the foreclosure.

W. Sullivan, for defendant, admitted that the only question in the cause was, whether the plaintiff was entitled by law to recover such balance.

F. C. Gray, for plaintiff, stated, that the point had been repeatedly decided in favour of the right of the plaintiff.

STORY, Circuit Justice. This question has been long since settled by the local law. In *Amory v. Fairbanks*, 3 Mass. 562, the supreme court of this state affirmed the right; and this court afterwards, in *Hatch v. White* [Case No. 6,209], recognised the same doctrine. It is too late now to controvert it. Judgment for the plaintiff.

¹ [Reported by William P. Mason, Esq.]

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