

Swann. This gentleman was in no way connected with the original transaction between Rebecca Dorsey and the Neptune Insurance Company. But after she had conveyed her equity of redemption to Edward H. Dorsey, Mr. Swann endorsed certain notes, given by the latter to the assignee of the Neptune Insurance Company, for interest due upon the mortgage. The remarks of *Chief Justice Marshall*, in the case of the *Bank of the United States vs. Winston's Ex'or*, 2 *Brock. Rep.*, 254, are well worthy of attention in considering this question; and certainly are calculated to awaken serious doubts with reference to the rights of a party, not bound by the original security, to be substituted to all the rights of the original creditor upon paying him the debt. And these doubts are strengthened, in this case, by the circumstance that Mr. Swann never did become the surety of the original principal debtor, Rebecca Dorsey, but of Edward H. Dorsey, the assignee of the equity of redemption.

But, it is said, the second mortgagee is in no way injured by what Swann did, or by what is now claimed for him; that the whole amount of the prior incumbrance, principal and interest, must be paid before the second mortgage can be let in; and this, of course, is quite true. But it is equally true, that the interposition of Mr. Swann, in paying this money, has turned interest into principal, to the manifest prejudice of the second mortgagee, as upon examining the Auditor's statement of claims plainly appears. The amount paid by Mr. Swann, as interest, amounted to \$443 55; and this sum is now swelled, by the interest which has accrued upon it, to upwards of \$560. It is most obvious, that a repetition of this operation, from time to time for a series of years, as interest upon the mortgage debt falls in arrear, would most seriously affect the junior incumbrancer, and might, in process of time, exclude him altogether from the benefit of the security, or, at all events, very much impair his right under it.

I am, therefore, of opinion, that the right of substitution claimed cannot be maintained; and that the exception of Mr. Glenn to this claim, No. 12, must be ruled good. The holder