

than \$13.33, although it may upon trial be proved to be less than that sum.

Exceptions overruled.

SMITH, J., did not sit: the others concurred.

BROWN v. WEST.

To a writ of entry to foreclose a mortgage the defendant pleaded a former judgment upon the same mortgage, and payment of the amount thereupon adjudged to be due. Replication, that one of the mortgage notes then due was not included in the judgment. Rejoinder, that the amount of the former judgment was the sum adjudged to be due on all the notes secured by the mortgage. The plaintiff having demurred to the rejoinder, the demurrer was overruled.

WRIT OF ENTRY, to foreclose a mortgage. Plea, that the plaintiff, at a former term, recovered judgment for the possession of the demanded premises under and by virtue of the same mortgage. Replication, that the former judgment was a conditional judgment for the sum of \$3,980.79, the amount due upon four notes secured by said mortgage, from which the premises were redeemed, and that the plaintiff brings this action to foreclose the mortgage because of the non-payment of an additional note for the sum of \$800, secured by said mortgage, and not included in said conditional judgment. Rejoinder, that in the former action the court adjudged the sum of \$3,980.79 to be the amount due upon all the notes secured by said mortgage, and rendered said conditional judgment therefor, which amount, with all lawful costs, was paid by the defendant to the plaintiff, and the mortgaged premises redeemed from said mortgage, and that the plaintiff was thereby estopped to maintain that said \$800 note was not included in said judgment, and also estopped to maintain this action. The plaintiff demurred.

Sulloway & Topliff, for the plaintiff.

B. Wadleigh, for the defendant.

CLARK, J. The facts alleged in the rejoinder and admitted by the demurrer are sufficient to constitute a defence to the plaintiff's action.

Demurrer overruled.

SMITH, J., did not sit: the others concurred.