

not be foreclosed until two years after the 26th of May, 1828, cannot be considered as an enlargement of the time of payment to the prejudice of these sureties, who could not be called on for payment before the mortgage credit had expired.

The defendants have further insisted, that the deed of the 17th of May, 1828, by which Thomas Clagett made an assignment of his goods for the benefit of his creditors, gave to Salmon a security for the payment of the debt covered by the mortgage, which he was bound to make available to its full extent; or to hold it for the benefit of the sureties of Thomas Clagett.

**177** \*But that deed could not, in any way, be considered as a security held by Salmon. His debtor, Thomas Clagett, placed certain funds, by its means, in the hands of trustees for the benefit of his creditors generally, which might have been so applied or not; but nothing was thereby put into the hands of Salmon, or placed exclusively within his power or control. The agreement of the 26th of the same month, it is true, did give Salmon an additionable security for his debt; but he alleges, and it is in proof, that he still holds that security, and has used all due diligence to make it as productive as possible. There is, therefore, no foundation for this objection upon which these sureties claim to be discharged.

By the agreement of the 26th of May, 1828, it was stipulated, that after it had been executed by the respective parties, that all responsibilities to and from Thomas Clagett should be annulled, so far as the persons represented by those who signed it might be concerned.

The responsibilities to and from Thomas Clagett, here referred to, were the notes of Thomas Clagett, and his contracts for the payment of money held by Salmon; and his other creditors. It is, however, only those responsibilities, or securities held by Salmon alone, and which he annulled, that can, in any way, be considered as prejudicial to these sureties. The whole instrument of the 26th of May, 1828, must be taken together; and so taken, it appears, that Salmon himself discharged Thomas Clagett from no responsibility whatever; because it is expressly stipulated, that Salmon should retain the mortgage to indemnify him for any deficiency which might exist after the application of the funds then put into his hands; in other words, that after so obtaining a partial payment, Thomas Clagett should be held bound as his debtor for the balance. So far, then, there is nothing like a discharge of any security held by Salmon.

But Salmon, it is said, held the notes of Thomas Clagett; and it is true he did; they were notes signed or endorsed by the family of Thomas Clagett, who are these very mortgagors and sureties; and the family of Thomas Clagett were expressly exonerated from them only. Those notes were securities upon which