after that of the 26th Nov 1850 had been executed and recorded. We think this case is within the principal recognized and decided by the Court of Appeals in the case of Chase & McDonald vs Ridgely 7 H & J 160. There the mortgage was given to indemnify Ridgely as surety on account of his prospective liability as endorser on certain notes to be given to the Union Bank the notes were given but were afterwards paid with funds obtained from the City Bank upon notes endorsed by the mortgagee as surety The Court held that the liability of the surety for the notes given to the City Bank was covered by the mortgage it was treated as a continuation of the same liability on the part of the surety although the notes originally given to the Union Bank after being renewed from time to time as specified in the mortgage had been paid and surrendered The Court considered that the debt for which the surety was liable remained unpaid It was only transferred from one bank to another and the indemnity secured to the endorser under the mortgage remained That is a stronger case in support of the appellants rights than the one before us here the original note was held by the Farmers & Mechanics Bank of Frederick County for collection The Bank consented to accept the payment of a part and to take a new note then given for a part of the original debt Markell the mortgagee remained liable as indorser and surety We see no good reason why the mortgage should not stand as security to indemnify him for that liability. If the note for $475 had been given to the surety as a renewal in part of the first there could be no doubt that Markells liability upon it would be covered by the mortgage although no provision is made in the mortgage for renewals the case of Bunkerhoff vs Lansing 4 Johns Ch R 65 cited by the appellees counsel establishes that position Then what difference is there in principal growing out of the fact that the Bank which held the note as agent of the Mayors made the arrangement whereby $475 of the debt remained unpaid and Markells liability to that extent was continued.

We are of opinion that the mortgage to the appellant of the 26th Nov 1850 is a subsisting security to indemnify him for his liability on the note for $475 and that fund should be applied to the payment thereof after satisfying prior liens The question next arises is he in a position to claim the benefit of it not having paid the note to the Bank In this case the principal debtor is insolvent and the funds pledged by the mortgagee to indemnify the surety are in Court it would be inequitable to deny to the surety the right to have them applied to the payment of the debt In the language employed by the Chancellor in Chase & McDonald vs Ridgely if the mortgage had been given to the Bank and not to Markell & equity would give him the benefit of it and surely if a Court of Equity would give him the benefit of the mortgage given to the Bank it will not deprive him of one given to himself "5 G & J 314 It is order that the auditors account may be corrected and further proceedings had in conformity with the opinion of this Court the cause will be remanded

Order reversed and cause remanded the costs to be paid out of the fund

True Copy

Test William A Spencer Clerk
Court of Appeals
of Md