the old mortgage. The Appellate Court, in passing upon the cause, takes occasion to say that "the taking of a new note and mortgage on personal property, to secure an indebtedness already evidenced by a note and mortgage on the same property, does not, even when the first note and mortgage are cancelled, operate to discharge the lien of such first mortgage." It is a proposition well established that the giving of one's note does not pay or extinguish the debt; so accepting the mortgagor's note for interest due on a mortgage does not pay that portion of the debt, nor discharge the lien of the mortgage to that extent.

In an action to reform a mortgage, the facts were shown to be as follows: A executed a mortgage to B, but made a mistake in description of property. He (A) made a second mortgage on same property to C, to secure a note given in payment of several long past due notes. Action by B to reform mortgage against C, who had no notice of mistake in first mortgage. *Held*, that action would lie, as second mortgage was given to secure prior debt and no new consideration passed. The right of restoration is allowed where the holder of a first mortgage, in ignorance of the existence of a subsequent recorded one, releases his mortgage and takes a new one; and under such circumstances the first mortgagee would be entitled to have the mortgage restored, and given the original priority.

The surrender of unpaid notes, secured by mortgage, and the taking of new notes and mortgage for the balance, does not of itself discharge the lien of the first mortgage. But this would be otherwise if the indebtedness secured by the second mortgage was created by the parties getting together and having a settlement of mutual running accounts and other debts, among which was the first mortgage debt, and a balance is found due the plaintiff. This balance being put in a new note and mortgage would form a new consideration, and the lien of the first mortgage be divested. But where there is an express agreement that the mortgage, under such circumstances, shall continue as a security, the lien of the first mortgage is not destroyed.

In *Burns* v. *Thayer*, it was held that, where a husband gave a mortgage for the purchase money of real estate, and this mortgage was afterwards discharged, and at the same time and as a part of the same transaction a new note and mortgage were given for the same purchase-money debt, the instantaneous seisin of the husband did not operate to give the wife a homestead in the premises.

A mortgage secures a debt or obligation and not the evidence of it, and no change in its form will discharge the mortgage. Whether a new mortgage, given in the place of an old one, shall be treated as a payment of the one for which it was substituted, will depend upon the purpose and understanding of the parties to the transaction. But not only will the intention of the parties be determined by the express agreement, but, in the absence of such, by the circumstances attending the transaction, from which such intention may be inferred. The court, in *Swift* v. *Kreamer*, says: "We regard the cancellation of the old mortgage and the substitution of the new as cotemporance acts. It was not creating a new incumbrance, but simply changing the form of the old. A court of equity looking to the substance of such a transaction would not permit a release intended to be effected only by force of, and for the purpose of giving effect to the last mortgage, to be set up, even if the last mortgage were inoperative."

A mortgagee who takes a new mortgage from the grantee of his mortgagor in the place of the old one, does not lose his priority over judgment liens existing subsequent to the date of the old mortgage. If a mortgagee release his mortgage and accept a new mortgage, without knowing of the existence of a second mortgage, the second mortgagee will not be allowed to avail himself of the advantage thus gained; and the law will uphold a mortgage lien in favour of a mortgage against an intervening title, even where the parties had undertaken to discharge the mortgage, unless injustice would be done thereby. And thus a mortgagee lien, purchased by the owner of the equity of redemption, will, in the absence of a contrary intention manifest to the court, be kept alive in equity for the purchaser's protection against an intervening incumbrance.

In *Rump* v. *Gerkens*, the plaintiff released his mortgage, not knowing of a junior mortgagee, and the court say, that such did