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reason as he states in testimony that he did not understand the transaction, As it was understood by him that the mortgage was to be assigned to the person who advanced the money, And as William E. Eaves, at the time he paid the $50.— had told him that "he had a man he (Harris) was to transfer the Mortgage to" x x x and give the man next the $50.— for that purpose". Dr. Nicodemus swears that, the understanding with Eaves and Hanode was, that he was to advance the money to pay the mortgage, and be secured by a first mortgage on the property. On the 10th of January when Mr Harris went to the office of his Counsel, with the Mortgage and the note. Mr Norwood in the meantime having found out the existence of the second Mortgage and the judgments, advised Mr Harris to erase the release and design the mortgage to Dr John D. Nicodemus, which was then and there done and the assignment put on record, The acting Executor, as before stated, upon the advice of his Counsel filed a report of his sale on the 13th day of February 1894, These facts do not in any way, show a release of the Mortgage Mr. Harris although he had signed the release on the Mortgage, refused to deliver it, and after a Conference with his Counsel eraser the release and assigned the Mortgage to Dr Nicodemus, as has been stated, The payment of the money by Mr Hanode was Certainly no release of the Mortgage. It was only the purchase of Mr Harris' interest in the property. As a general rule payment of an incumbrance by a party, whose duty or obligation it is, by Contract or otherwise, to pay, extinguishes it. but whether this effect follows in other cases depends on the intention of the parties, and as to the question of intent in such Cases, the interest of the party making the payment, has a strong if not Controlling influence"

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It is evident from all the facts, that Mr Hanode who paid the money did not intend it as an Extinguishment or renewal of the incumbrance, as that would be contrary to his interest, and also to his declaration to Mr Norwood on the day the money was paid, when he said "I want to buy the property, and want a good Clear title" He meant and so did Mr. Norwood mean, that he was to have all the interest in the property that Mr Harris took under the sale to himself. In other words Mr Hanode was to step into, or take Mr Harris' place as purchaser, There has been therefore, no release of the Mortgage, properly speaking under which the farm was sold. The deed from William E. Eaves and wife to William E. Hanode only operated as a Conveyance of the grantors' equity of redemption in the farm. It was said in the argument that the Mortgage debt was discharged because the money paid to Mr Harris by Mr Hanode was the money of William E. Eaves. This cannot be so, because before it was paid, Mr. Eaves had given up his option to redeem, and had told Mr. Hanode "he should prepare" he should prepare to buy the property