

(which covenant was implied from a recital in the deed,) with A. and the other two owners of the mine to erect a new smelting-mill on a waste which was not included in the demise, and which was not shown to belong to A. or to him and the other owners, but on which they had the power of erecting buildings for working the mines and making the ore merchantable by smelting. It was held that the covenant to build the new smelting-mill tended to the support and maintenance of the thing demised, and that the assignee of A.'s share of the mine might sue upon it in respect of his interest. And so a covenant by lessee and his assigns, the former being also lessee of a colliery, to make a railway over the land and transport thereon coal gotten out of the colliery or any other land in the township, intended for shipment, &c., was held to bind the assignee, *Hemmingway v. Fernandes*, 12 Sim. 228. If a lessee covenant to build, it is *prima facie* in contemplation of the parties that he shall build immediately, and the breach may be complete before the assignment, *per Bramwell B. in Minshull v. Oakes supra*. A covenant to rebuild within a restricted time, it seems however, does not run with the land, *St. Saviour's Church Wardens v. Smith*, 3 Burr. 1271. But "lessee covenanted for him and his assigns to rebuild and finish a house within such a time; after that time he assigned, the house not being built and finished: *per Holt, C. J.*, this covenant shall not bind the assignee because it was broken before the assignment: *Aliter*, if broken after; as if the lessee had assigned before the time expired," *Grescot v. Green*, 1 Salk. 199.

**Assignee though named not bound by collateral covenants.**—But although the covenant be for him and his assigns, yet if the thing to be done be *merely collateral* to the land and doth not touch or concern the thing demised in any sort, then assignee shall not be charged. As if the lessee covenants for him and his assigns to build a house upon the land of the lessor, which is no parcel of the demise, or to pay any collateral sum to the lessor or to a stranger, it shall not bind the assignee, because it is merely collateral and in no matter touches the thing that was demised or that is assigned over, and therefore in such case the assignee of the thing demised cannot be charged with it no more than any other stranger, *Spencer's case*, 2nd Resolution. If a man leases sheep, or other stock of cattle, or any other personal goods for any time, and the lessee covenants for him and his assigns at the end of the time to deliver the like cattle or goods as good as the things letten were, or such price for them, and the lessee assign the sheep over, this covenant shall not bind the assignee, for it is but a personal contract, and wants such privity as is between the lessor and lessee and his assigns of the land in respect of the reversion. But in the case of a lease of personal goods there is not any privity nor any reversion, but merely a thing in action in the personalty, which cannot bind any but the covenantor, his executors or administrators who represent him.<sup>23</sup> The same law if a man demise a house and land for years with a stock or sum of money rendering rent, and the lessee covenants for him, his executors, administrators and assigns, to deliver the stock or sum of money at the end of the term, yet the assignee shall

<sup>23</sup> *Lybbe v. Hart*, 29 Ch. D. 8. But see *Clegg v. Hands*, 44 Ch. D. 512.