pleaded as to a part of this, *viz.* as to so much as complained in respect of a water corn-mill, &c., erected and built during the term, and shewed that they were buildings erected during the term, and not erected in place of others previously existing. It was contended that this plea was good on the authority of Spencer's case, the lessee not having covenanted for his assigns.

"The state of the authorities in question seems as follows;—the proposition that a covenant which would run with the land, if the assignee were named, does not where he is not named, and the thing was not *in esse* at the time of making the covenant, is laid down in Spencer's case. The same is to be found in Comyn's Digest, Cov't (C.) 3, citing Spencer's case and Jones, 223, which, however, does not support the doctrine. It is not found in Rolle. It is in Viner's Abridgement, Covenant (L), where, however, Moor. 159, is cited as establishing the same, when in truth it established the contrary. It is negatively sanctioned by the silence of the author and editors of Smith's Leading Cases, and it is cited in Daughty v. Bowman, 11 Q. B. 444, where, however, with submission it was inapplicable. There the question was if an assignee of the reversion was bound, which depends on different considerations: 1 Wms. Saund. 241 d. In Sheppard's Touchstone, 180, it is thus put, 'if the lessee covenant for himself, or for himself, his executors or administrators only to build a *new house* upon the land, the assignee is not bound;' the editor adds, because he is not named. In page 179, Spencer's case is cited, but the case put is of a new house. A similar remark applies to Cockson v. Cock, Cro. Jac. 125, where a covenant to build *de novo* is called collateral. But it may be not unreasonably said that to build a new house does not 'extend to the support of the thing demised.' Indeed Lord Coke thought it waste; Co. Litt. 53 a. On the other hand, Moor. p. 159, pl. 300, (which is evidently Spencer's case, though the date is later,) gives the decision the other way. The explanation may be that Lord Coke is reporting a variety of arguments and opinions expressed, while Moor gives the ultimate decision. Smith v. Arnold, 3 Salk. 4, is directly contrary; and in Bally v. Wells, 3 Wils. 25, the contrary is stated. No reason is given for the alleged difference between where the assignee is and is not named; on the contrary the reason given for binding in any case an assignee not named, *viz.* that he takes the benefit and burthen, seems equally to apply to every such case. No doubt if the law were clearly laid down without contradiction, it ought to be abided by, though no reason could be given for it. . . . But in deciding which of two conflicting sets of authorities is correct, it is not irrelevant to look at the reason of the thing. No doubt the resolution in Spencer's case has been repeatedly cited, or the same thing said **345** as is said *there, but that resolution is the foundation of the opinion; it never appears to have been acted on; on the contrary Moor. 159, and Smith v. Arnold are decisions the other way." The Court, however, thought it sufficient to decide the case on the ground above stated. If, however, the assignee be named there is no doubt of his liability in such cases.

In Sampson v. Easterby, 9 B. & C. 505, 8 Bing. 644, S. C. in error in the Exchequer Chamber, there was a lease from A. to B. of an undivided third part of a mine, and B. covenanted, for himself and his assigns,