

ing by proviso or covenant; and if he grants the term, subject to a condition that it shall cease if the lessee assigns, an assignment by the lessee will be void; but if the lessor restrain the lessee from assigning by covenant only, the latter by assigning commits a breach of covenant, but the assignment itself is not void. And in answer to the argument that the defendants were estopped from setting up their own breach of covenant as an answer to the action, he said, that if the obligation to perform such a covenant arises from the privity of estate, that obligation will cease when the privity of estate is destroyed; and if in point of law the interest, which the defendants had in the land, is divested out of them, they may in answer *to this action, which is founded on **347** privity of estate, plead that this estate and interest has ceased; *S. P. Hintze v. Thomas*, 7 Md. 347. Bayley J. further said that the plaintiff's remedy was by an action on the covenant not to assign, but it would admit of some doubt, whether the defendant was within the covenant, for the lessee only covenanted that he, his executors or administrators, would not assign; see also *Doe v. Smith*, 5 Taunt. 795.

The latest authority is *Williams v. Earle supra*. There the lessees covenanted for themselves, their heirs, &c., and assigns, that they, their executors, &c., and assigns would not assign, or underlease, or otherwise part with the possession of the demised premises, without first obtaining the consent in writing of the lessor. The lessees with the lessor's consent assigned to the defendant, who carried on the business on the premises, but afterwards finding it necessary to discontinue the business, offered to surrender them up, which offer being declined, he, in order to get rid of further liability under the lease, assigned to a beggar without the lessor's consent. The Court observed that the covenant was material as touching the interest of the landlord and tenant, and that it touched and concerned the land quite as directly as many covenants that had been held to do so. It is an express covenant as to who shall have and occupy the land, and it is inserted with a view, that the landlord shall not be deprived of a voice as to who shall be substituted to the original lessee in the possession of the landlord's premises. And distinguishing the covenant from one not to assign at all, they said that a covenant, that the lessee and his assigns shall not assign without licence, may run with the land, *toties quoties*.²⁴ It was further held that, although the covenant not to assign was binding on the defendant yet the assignment was operative and the estate passed to his assignee, and the defendant was not liable for subsequent breaches of the covenants in the

²⁴ **Covenant not to assign term.**—A covenant not to assign without consent of lessor, assigns being named, will run with the land. *McEacharn v. Colton*, (1902) A. C. 104. Cf. *West v. Dobb*, L. R. 4 Q. B. 634; L. R. 5 Q. B. 460. But see *McCormick v. Stowell*, 138 Mass. 431.

In *Reid v. Weissner Co.*, 88 Md. 234, it was held that where a lease contained a condition against assignment without the lessor's consent and such consent was given without restriction as to future assignments, the condition was thereby altogether waived and the assignee might thereafter assign without the consent of the lessor.