land, was determined to be a covenant to do a thing collateral to the demised premises, and therefore not to run with the land, nor enure to the assignee of the lease. So where lessees of a theatre agreed by deed to pay the plaintiff a sum of money lent them on a certain day, and that until payment the plaintiff and such persons as he might appoint should have the free use of two boxes in the dress-circle and circle above, no specific boxes being mentioned, and the lessees assigned to the defendant, it was held that this was a mere personal contract, and the assignee was not liable for refusing to let the plaintiff use the boxes, Flight v. Glossop, 2 Scott, 220. So covenants to repair, renew and replace mere utensils or moveable chattels, used in the business carried on upon the demised premises, and being there at the time of the demise, are merely collateral, Williams v. Earle *supra*.

Assignee bound only when legal assignee of whole term.—But in order to make a party chargeable as assignee, the whole interest in the original lease must be assigned, see Earl of Derby v. Taylor, 1 East. 502; and all the interest of the lessee does not vest in the assignees where they are joint-tenants of three-fifths only of the demised premises, Grattan v. Wall, 2 Ir. R. Exch. 484. And in pleading it is not sufficient to say that the *tenements* came to the defendant by assignment, but it must be shewn that he is assignee of the *term*, for otherwise it might be an assignment of another estate than the term of the lessee, Huckle v. Wye, Carth. 256; but it is not in this case necessary to set out *mesne* assignments, though it is otherwise where the plaintiff is assignee, see Dean, &c., of Bristol v. Guyse, 1 Wms. Saund. 112 b. n. 1; but see Cuthbertson v. Irving *infra*. So in Mayhew v. Hardesty, 8 Md. 479, where the mortgagee of a term, after forfeiture, sold his interest and gave a *bond of conveyance* thereof to A. who entered, it was held that the mortgagee still remained answerable, and that A. was a mere sub-lessee, and as such not liable under the covenants in the lease to the assignee of the reversion (see Holford v. Hatch, Doug. 183), the Court saying that an interest in land for over seven years cannot, under our registry laws, be transferred by acts *in pais*,[26] nor otherwise than by a deed duly executed and recorded, (see now the Act of 1865, ch 47,[27] as to the registry of bonds of conveyance, and other agreements to convey, but the bond inrolled does not pass the title, and the Act would not affect the decision). From which case it would appear that the proposed mortgagee of a term ought to take the assignment by way of under-lease, and thus escape all liability for the covenants in the lease; for it being his folly to take a mortgage by assignment, he will not be relieved in equity, Pilkington v. Shaller, 2 Vern. 374. But the practice of conveyancers here seems to be otherwise. In England there has been a class of cases, of which Lucas v. Comerford, 3 Bro. C. C. 166; 1 Ves. Jun. 235; 8 Sim. 499, S. C. and Flight v. Bentley, 7 Sim. 149, are examples, in which it was held that if an equitable interest were acquired in leaseholds by a contract in the nature of an assignment, as by equitable mortgage by deposit of the lease, the landlord had a right

[26] Walsh v. McIntire, 68 Md. 415.
[27] Code 1911, Art. 21, sec. 28.