to proceed upon the covenants in equity against the assignee as his tenant without more, though he had not taken possession. The bill in such cases was framed upon the idea that such equitable assignees were, as mortgagees, bound to pay the rent and perform the covenants in the lease, and that they might be decreed to perform accordingly; and, if necessary, that the equitable mortgagor might be decreed to execute a valid legal assignment to the equitable assignees, by way of mortgage, of the lease and the premises comprised in it. But Flight v. Bentley, was overruled in Moores v. Choat, 8 Sim. 508, approved and followed in Robinson v. Rosher, 1 Y. & Coll. C. C. 7, where the doctrine was stated to be, that if lessee contracts to sell his lease, and another party contracts to purchase it of him, it would **349** be contrary to the established *principles of a Court of law or equity to say that thereupon any right or equity arose to the landlord, either to compel the purchaser to take an assignment of the lease or to compel the seller to assign it. No equity can arise to the landlord to interfere in consequence of such a contract between the lessee and intended assignee. The depositary of a lease for securing a debt has a right to file a bill for foreclosure, (but see Kennard v. Futvoye, 2 Giff. 81,) and to have the lease assigned to him, or, if he has an agreement for a sale, he may file a bill for specific performance; but he is not bound to do either, and until he exercises his option, or takes possession of the tenements comprised in the lease, he stands, to all intents and purposes, in the character of an entire stranger to the tenancy, and the landlord has no right to interfere with him. In Lucas v. Comerford *supra*, the depositary of the lease was in possession of the premises and had submitted to perform some of the covenants. But Lucas v. Comerford was overruled in Moore v. Greg, 2 De G. & Sm. 204; S. C. on appeal, 2 Phill. 717, see note to the case in the latter book, where it was held that the landlord had no equity to compel the equitable assignee of a lease to take a legal assignment, though he had taken possession, acted as owner by paying rent and otherwise conducting himself as such, and been treated and accepted by the lessor as owner of the lease; nor was he liable to the lessor on the covenants in the lease, there being no privity between him and the lessor till he has made himself legal assignee. And the Lord Chancellor observed, that to treat possession as constituting the equity would be doing away with the distinction between an assignment and under-lease. In Cox v. Bishop, 26 L. J. Chan. 389, the question was, whether the equitable assignee of a legal term in certain coal-mines, &c., was liable to be sued by the landlord for rent which became payable, and for damages for breach of covenants committed during his possession and enjoyment of the premises under such equitable assignment, which possession and enjoyment had ceased, and Lord Justice Knight Bruce said, following the Lord Chancellor in Moore v. Greg, that the possession alone was not sufficient, the agreement for the assignment was not sufficient, and he did not see how an union of the two could become sufficient; in which Turner L. J. concurred, and added that the relation of landlord and tenant was legal and not equitable.

**Liability of assignee at suit of lessee.**—In Lester v. Hardesty, 29 Md. 50, the assignee by deed of a mortgage-term failed to have it recorded; the