who has no estate in the land, has a reversion by estoppel against the lessee, and secondly, that where the lessor by deed grants a lease without title and subsequently acquires title, the estoppel is said to be fed, and the lease and reversion take effect in interest and not by estoppel, and an action will lie by the assignee of the reversion against the tenant on the covenants in the lease. They then held,

1°, that if any estate or interest passes from the lessor, or the real title is shown upon the face of the lease, (see Greenaway v. Hart *supra*) there is no estoppel.

2°, that if the lessor have no title, and the lessee be evicted by title paramount, he may plead this, and establish a defence to any action against him, but

3°, that so long as the lessee continues in possession under the lease, he cannot set up any defence founded on the fact that the lessor *nil habuit in tenementis;* and upon the execution of the lease, there is in contemplation of law created in the lessor a reversion in fee simple by estoppel, which passes by descent to the heir, and by purchase to an assignee or devisee, who may sue on the covenants in the lease; see 1 Smith's Lead. Cas. 38 a. *et seq.*

In Hintze v. Thomas *supra*, A., lessee for 99 years commencing 2d Nov. 1792, leased on 7th May 1836 the premises to B. for 99 years from that date, reserving a rent, and afterwards assigned her interest in the premises to C., subject to the latter lease. It was insisted that A., having conveyed a larger interest in the premises than she had, was left without any reversion and could convey none to C., who therefore could not sue upon the covenants in B.'s lease.[42] The question was waived by the Court, the case being decided on the ground before stated. In Baker v. Gostling, 1 Bing. N. C. 19, the executrix of a lessee, who had underlet the premises for a longer term than he had therein, was held entitled to recover the rent accrued during the term from the under-lessee upon a covenant to pay it, notwithstanding the under-lease was in fact an assignment.

In Davis v. Underwood, 2 Hurl. & N. 570, the defendant, an under-lessee who had covenanted with the plaintiff, his lessor, to keep and, at the expiration or sooner determination of the term, to deliver up the premises in repair, allowed them to be out of repair. While they were in this condition, the plaintiff, (the lessee,) having committed a forfeiture by nonpayment of rent, the superior landlord brought an ejectment and evicted the plaintiff and defendant. To an action brought by the plaintiff it was objected, that he had no reversion, which had been destroyed by his own act, but *per* Pollock C. B., the superior landlord may have a right of action on a covenant to leave in repair, as well as ejectment, and as the intermediate landlord is liable to make good the defects in the premises, he may indemnify himself by this action before hand; and he accordingly recovered substantial damages.

Property to which Statute applies.—With respect to the nature of the property to which the Statute applies, it was held in Milnes v. Branch, 5 M. & S. 417, that the assignee of a rent-charge is not within it, both because he has not the reversion, and because a covenant cannot run with

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[42] See Worthington v. Lee, 61 Md. 539.