1 N. R. 158. And accordingly in Dakin v. Pomeroy, 9 Gill, 1, it was held that a covenant for the quiet enjoyment of lands was not assignable within the act of 1829, ch. 51, (Code Art. 9, secs. 1-3)[45] which does not include stipulations to do or not to do some act or duty, and therefore, where such a covenant was assigned to a person who had no interest in the land, that he could neither institute suit upon it in his own name, nor offset it in a suit by the covenantor against him.

Covenants where no estate passes.—Finally, covenants that wait upon the estate are void in their creation, if no estate pass by the deed, Anderson v. Critcher, 11 G. & J. 450; and so if the estate be evicted or surrendered they become void, and of this description are all covenants in leases which in any way relate to the land demised, Chandos v. Brownlow, 2 Ridgew. P. C. 406; Capenhurst v. Capenhurst, T. Raym. 27; *aliter*, if the covenant be distinct and independent, Northcote v. Underhill, 1 Salk. 199. And an action cannot be maintained on a covenant to repair in a lease which the lessor never executes, although the lessee occupies the whole of the term in the intended lease, Pittman v. Woodbury, 3 Exch. 4.

Restrictive covenants.—As to covenants that run with the land in other cases than between landlord and tenant, see Keppel v. Bailey, 2 Myl. & K. 517, and Spencer's case, 1 Smith's Lead. Cas. *supra, in notis.*[46]

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[45] Code 1911, Art. 8, secs. 1-3.

[46] **Covenants in deeds.**—By the common law, except in cases of landlord and tenant, the *burden* of covenants does not run with the land, though the *benefit* does. A covenant made *with* the owner of land to which it relates runs with the land; but a covenant made *by* the owner of land to which it relates does not run with the land so as to bind the assignee of the covenantor. 1 Smith's Lead. Cas., 11th Ed., Vol. 1, pp. 74, 75, 78. Now the Statute applies only to leases and has no application to conveyances in fee or in tail. The courts have sometimes, it is true, applied the principles of the Statute to absolute deeds. For example in Whalen v. R. R. Co., 108 Md. 19, it is said: "The action in Spencer's Case was between a lessor and the assignee of the lessee, but the principles enunciated therein have been held applicable to covenants between grantor and grantee and their assigns in very many modern cases." See also Taite v. Gosling, 11 Ch. D. 273. And it is largely due to this fact that so much confusion is found in the cases.

It is therefore essential to a clear understanding of this difficult subject to bear constantly in mind not only this common law principle but also the limited application of the Statute. It is only by doing so that the decisions become in any way reconcilable.

The most usual covenants which, when made by a vendor in fee, will run with the land are covenants for title; but all other covenants which touch or concern the land and are beneficial to the estate as affecting its quality, value, or mode of enjoyment, will also run with the land. Poe's Pleading, secs. 328-330.

As stated above, the burden of a covenant in a conveyance in fee does not run with the land to which it relates, though the contrary has been claimed, (as see Cooke v. Chilcott, 3 Ch. D. 694). The learned annotator of Smith's