

I am unable to see in what way the payment of part of the consideration can be said to touch or concern the land conveyed. It is not like the rent, which, in the theory of the law, issues out of the land devised—though even as to rent see *Milnes v. Branch*, 5 M. & S. 411—it is much of the nature of a covenant on the part of a lessor to pay on a valuation for trees planted by the lessee: *Gray v. Cuthbertson*, 4 Doug. 351 (although in that case indeed the breach was the refusal to name an arbitrator to fix the value of the trees); or to pay for improvements: *Guten v. Gregory*, 3 B. & S. 90; or by lessee to pay in addition to the rent 10 per cent. on the outlay the less should make in improvement of the buildings: *Lambert v. Norris*, 2 M. & W. 333; *Hoby v. Roebuck*, 7 Taunt. 157; *Donellan v. Read*, 3 B. & Ad. 899; *Martyn v. Clue*, 18 Q.B. 661. See also *Webb v. Russell*, 3 T.R. 393; *Stokes v. Russell*, 3 T.R. 678; *Russell v. Stokes*, 1 H. Bl. 562. Such covenants have been held to be merely personal between the covenanting parties, and not to bind the assignees, even if named.

I do not press the point here that the original grantees did not even in form bind their assigns to pay, the covenant reading that they, "for themselves, their executors, administrators, or assigns, covenant," etc. Nor do I enter into the larger inquiry whether except in the case of landlord and tenant, the burden of a covenant can run with the land. This has been very fully considered by the Court of Appeal in *Austerberg v. Oldham*, 29 Ch. D. 750. All the cases theretofore were examined, and, while the court did not absolutely decide that this principle was confined to the case of landlord and tenant, they in effect made its quietus for the proposition that it extended beyond. In that case A. sold a piece of land to B. as part of the site of a road intended to be built and maintained. B. covenanted with A., his heirs and assigns, that he, his heirs and assigns, would make the road and keep it in repair. This land was bounded on both sides by other lands of A. A. sold to the plaintiff; B., to the defendants; both with notice of the covenant. It was held by the Court of Appeal, affirming the decision of the Vice-Chancellor of the Duchy of Lancaster, that the plaintiff could not enforce the covenant against the defendant, as the covenant did not and could not run with the land. Upon the equitable doctrine that a person who takes with notice of a covenant is bound by its being appealed to—and Rigby, L.J., in *Rogers v. Hosegood*, [1900] 2 Ch. 388, at p. 401, says: "I do not think any covenant runs with the land in equity. The equitable doc-