IRELAND.

COURT OF CHANCERY.

JANE HIGGINS - - - - - - - *Appellant*;
LAURENCE Earl of ROSSE - - - *Respondent.*

BY a deed executed in 1708 lands were vested in *A.* for life, remainder to *B.* for life, remainder to the issue of *B.* in tail, remainder to the heirs male of *A.* remainder to the right heirs of *A.* with power to *A.* and *B.* successively "to grant leases for lives of any part of the lands in set-"tlement, renewable for ever, without fine to be taken "for any such *first* lease; such lease not to be of more "lands than six plantation acres, at the best rent, with "covenants to be in such leases for building, &c."

In 1726 *A.* grants to *P.* (under whom the Appellant claims) three leases, the two first being of houses and gardens, together with six plantation acres to each; the third lease being of a house, garden, and three acres; and all three leases being for three lives, with a covenant for renewal on application within six months after the failure of each life, on paying 4 *l.*, and in case of neglect to forfeit the right of renewal.

In 1730 a new settlement is made, by which the lands are limited to *A.* for life, remainder to *C.* the son of *B.* (deceased) for life, remainder to the issue of *C.* remainder to several brothers of *C.* for life, in succession, and their issue in tail, in strict settlement; remainder to the right heirs of *C.* with power to *A.* to grant leases for three lives, renewable for ever, of any house and garden in the town of *B.* with ten acres of land, &c., and a similar power to *C.* and his brothers in succession, to lease any *plot* for a house and garden, with ten acres, &c.

In 1735 the third of the leases granted in 1726 was renewed by *A*, according to the covenant. After the date of this renewal, fines of the lands were levied by *C.* being in possession upon the death of *A.* In 1754 a recovery was suffered to such uses as *C.* and *W.* his son, should appoint, and in default of appointment to *C.* for life, remainder to *W.* and his heirs.

1821.

HIGGINS v. ROSSE.

By articles in 1754, and an act of parliament in 1758, the lands were limited to *C.* for life, remainder to *W.* for life, remainder to the issue of *W.* in tail, remainder to the right heirs of *C.* The act of parliament in pursuance of the articles vested a power in *C.* and *W.* severally in succession, to grant leases for three lives renewable for ever, of *any plot* for a house and garden in, &c., and any quantity of land not exceeding ten acres.

In 1779, by deed and recovery, the lands were limited, in default of appointment, to *W.* for life, remainder to *L.* (the Respondent in the appeal) in fee.

In 1786, *W.* the tenant for life named in the preceding settlement, renewed all the leases by deeds purporting to be executed in pursuance of the covenant for renewal, reciting the original leases of 1726; and that the leases had been frequently renewed; and containing covenants for renewal as in the original leases.

Further renewals to the same effect, and in the same form, were executed by *W.* in 1790.

W. died in 1791, when the fee vested in the Respondent. It did not appear, by direct proof, or otherwise, than by the recitals in the deeds of 1786, that any renewal had been made between 1735 and 1786. The rents reserved upon the leases were from time to time, and up to 1807, paid to and received by the owners of the lands for the time being, *including the Respondent*. In 1807 two of the *cestuy que vies* being dead, application was made to the Respondent for renewal, and upon refusal a bill was filed in Chancery to compel a specific performance of the covenant to grant renewals. The The Bill was dismissed without costs, and on appeal the judgment was affirmed, on the ground (*semb.*) that the leases were not warranted by the power.

Where a lease not warranted by a power is granted by a tenant for life, containing a covenant for perpetual renewal, the reversioner, by accepting for many years after he comes into possession the rent reserved upon the lease, does not confirm it so far as to make the covenant for renewal binding upon him.

BY marriage settlement bearing date the 15th of Oct. 1708, and made between Sir W. Parsons and

1821.

HIGGINS v. ROSSE.

William his son, and M. Parsons, of the first part; and certain trustees of the second, third, and fourth parts; the manor, &c. of Parsonstown were conveyed to the trustees of the second part, and their heirs, to the use of *Sir W. for life*; rem. to trustees to preserve, &c.; rem. to *Will. Parsons for life*; remainder to preserve, &c.; rem. to the issue of that or any future marriage of Will. in tail male; rem. to the heirs male of Sir W. with *remainder to his right heirs.*

The deed contained a *general* leasing power to Sir W., and to Will. Parsons to lease, &c., for any term not exceeding twenty-one years, or three lives.

There was also a power to Sir W. Parsons during his life, and after his death for Will. Parsons, during his life, to make leases for lives renewable for ever, without fine, present, or income, to be taken for any *such first lease* of any part of Parsonstown, and the other lands contiguous thereto, (the mansion-house, &c. excepted,) such lease not to contain or be of or for more lands than six plantation acres, at the best improved rent, with *covenants* to be in such lease or leases *for building* and improvements, and the fine to be taken for such lease or leases to be renewed not to exceed half a year's rent, reserved on the lands so to be leased.

There was issue of the marriage, Laurence, the eldest son; Will. the father died in the lifetime of Sir W. the grandfather.

By lease bearing date the 11th of Feb. 1726, made between Sir W. Parsons, of the one part, and N. Pritchett, of the other part, Sir W. Parsons, in consideration of the rents and covenants, &c. demised to Nicholas the house wherein Philip Langton then dwelt,

situate in Parsonstown, together with six acres of land, plantation measure, to hold all and singular the said demised premises, with the appurtenances, to N. Pritchett, his heirs and assigns, for the lives of the three persons therein named, and the survivors of them, and during the life and lives of such other person and persons as should for ever be added during the demise, at the yearly rent of 8 *l.* sterling, with clauses of distress and re-entry in case of non-payment.

The lease contained a covenant by Sir William Parsons for perpetual renewal, by adding new lives on payment of a small fine, such life to be renewed within six months after the falling of each life.

By another lease, bearing the same date, and made between the same parties, Sir William Parsons granted and demised to Nicholas Pritchett the house and garden wherein R. Gillespie of Parsonstown, sadler, dwelt, together with six acres of land, plantation measure, in Lough Guir, then or late in possession of Philip Langton, To hold for the three lives mentioned in the first lease, at the yearly rent of 4 *l.* This lease contained a covenant of renewal, upon payment of 2 *l.* as renewal fine, and clauses similar to those in the first lease.

By a third lease, bearing the same date, and made between the same parties, Sir William Parsons granted and demised to Nicholas Pritchett the house and garden in the Race Lane, near the town of Parsonstown, together with three acres of land, plantation measure, adjoining to the said house and garden, in possession of Philip Langton, To hold

1821.

HIGGINS v. ROSSE.

for the same three lives as mentioned in the first and second leases, at the yearly rent of 2*l.* sterling. This lease contained the covenant for renewal, and clauses similar to those in the two former leases. These leases do not appear to have been registered.

By a deed of settlement, bearing date the 4th of September 1730, made between Sir William Parsons and Laurence Parsons, his grandson and heir-apparent, of the first part; certain trustees of the second, third and fourth parts; and William Sprigge, and Mary Sprigge, his eldest daughter, of the fifth part, reciting certain articles of the 23d and 24th April 1683, and the settlement of 15th October 1708, and also reciting that a marriage was then shortly to be solemnized between Laurence Parsons and Mary Sprigge, Sir William and Laurence Parsons granted and conveyed the manor of Parsonstown, &c. to the trustees of the second part, and their heirs, upon trust, as to part of the lands to the use of Laurence for life, and as to the remainder (subject to a jointure) to the use of Sir William for life; remainder to Laurence Parsons for life; remainder to trustees to preserve, &c.; remainder to the first and every other son of the marriage in tail male; remainder in like manner to the first and every other son of Laurence by any after-taken wife in tail male; remainder to William Parsons, brother of Laurence, for life; remainder to trustees to preserve, &c.; remainder to the first and every other son of William in tail male; remainder in like manner to Pigott Parsons, George Parsons, and Thomas Parsons, brothers of Laurence; remainder to the right heirs of Laurence Parsons.

This settlement also contained a general and a special leasing power in the words following :—

"That it shall and may be lawful to and for the "said Sir William Parsons to make leases for three "lives, with renewals for ever, of any house and gar- "den in Parsonstown, with ten acres of land, planta- "tion measure, and no more, to be held therewith, "lying within one mile of the said town, at the best "improved rent that can be had for the same at the "time of setting, reserving half a year's rent on "every renewal, and to make leases of any part of the "said lands of which the said Sir William is tenant "for life, for the term of three lives, at the best "improved rent that can be had for the same at the "time of setting; provided always, that such powers "shall not extend to any part of the mansion-house, "gardens, orchards and demesne lands of Parsons- "town: and it is further agreed, that it shall and "may be lawful to and for the said Laurence Parsons, "and for all and every of the brothers of Laurence, "to make leases of all or any part of the said granted "and released premises, as he or they shall be or "come into possession, for the term of three lives, or "thirty-one years in possession, and not in reversion, "at the best improved rent, without fine or income, "with renewals for ever, reserving half a year's rent "on each renewal, of any plot for a house and garden "in Parsonstown, and ten acres of land to be held "therewith, the said land lying within one mile of "the town, (the mansion-house, and the gardens, "orchards and demesne lands thereof excepted.)"

There was issue of this marriage only one son,

1821.

HIGGINS v. ROSSE.

William, (afterwards Sir William,) the father of the Respondent.

In 1735 a renewal of the third of the leases granted by Sir W. Parsons appears to have been made by an instrument, in writing, annexed to that lease, as follows :—

" Whereas the annexed deed of lease, bearing " date the 11th of February 1726, hath since the " perfection thereof, through Nicholas Pritchett, " the original lessee, deceased, and Walter Pritchett, " his son and heir, also deceased, come by mesne " assignment into the hands of John Luther, as by " an indorsement on the said deed of lease may " appear: And whereas the said Walter Pritchett, " one of the lives in the said lease mentioned, died " on or about the 23d of August last; and the said " John Luther, pursuant to the clause for renewal " in the annexed deed of lease set forth, having " this day nominated the life of William Jessop, to " be added and inserted in the place and room of " the said William Pritchett, deceased: Now I, " Sir William Parsons, Bart. in consideration of " 1 *l.* sterling, or half-yearly rent of the annexed " premises, to me in hand paid by the said John " Luther, and in order to supply and fill up the " three lives according to the intent of the annexed " lease, have added and inserted, and by these " presents do add and insert, the life of the said " William Jessop to the time and term of the said " lease, in the place and stead of the said Walter " Pritchett, deceased; and do by these presents " demise, release and confirm unto the said John

" Luther, the demised premises in the town of " Parsonstown, his heirs and assigns, and for and " during the natural lives of John Burke and John " Langton, in the next indenture named; and for " and during the natural life of William Jessop now " inserted in the place and stead of Walter Pritchett, " deceased, and the survivor and survivors of them; " and for and during the natural lives of such other " person, as by virtue of the clause and covenants " in the said lease contained, shall from time to " time for ever hereafter be added during the said " lease or covenants in said lease mentioned, subject " nevertheless unto the clauses and covenants in the " annexed lease reserved and mentioned. In wit- " ness whereof, &c.—12th February 1735.—Wil- " liam Parsons."

Sir William died in 1749, and between the date of this last renewal and the settlement next stated, it appears that some fines had been levied by Sir Laurence.

In Hilary term 1754, a recovery of the estates was suffered by Sir Laurence Parsons and William his son, and the uses thereof were, by deed dated 19th January 1754, declared to be to such uses as Sir Laurence and William should jointly appoint, and in default of appointment to Sir Laurence for life; remainder to the use of William and his heirs.

By articles dated 28th of June 1754, and made between Sir Laurence Parsons and William Parsons, of the first part; Margaret Cleare, mother and guardian of Mary Cleare, and the said Mary Cleare,

1821.

HIGGINS v. ROSSE.

of the second part; and certain trustees of the third and fourth parts; Sir Laurence Parsons covenanted with Margaret Cleare, her executors, administrators and assigns, that within twelve months after Mary Cleare should obtain her full age of twenty-one years, and should join William Parsons, her intended husband, in a fine or fines of the real estates therein mentioned, to enure to the uses and purposes therein mentioned, Sir Laurence and William Parsons should and would levy one or more fine or fines, and suffer one or more common recovery or recoveries, wherein all necessary parties should join; and by good and sufficient deed or deeds, conveyance or conveyances, limit and convey the manor, &c. of Parsonstown, with the several other towns and lands therein mentioned, the estates of Sir Laurence and William Parsons, or one of them, subject as therein mentioned, to the use of Sir Laurence Parsons for life; remainder to William Parsons for life; remainder to trustees to preserve contingent remainders; remainder to the first and other sons of the marriage in tail male; with remainder to the right heirs of Sir Laurence Parsons.

By these articles it was agreed that a leasing power should be given to Sir Laurence Parsons and William Parsons, and Mary Cleare, and each and every of them respectively, when actually seised by virtue of the limitations, to lease the premises (except the mansion and demesne lands) for any term or terms not exceeding thirty-one years, or three lives, or any term for years determinable on one, two, or three lives in possession, and not in reversion,

for the best rent, &c.; and that Sir Laurence Parsons and William Parsons might also make leases for three lives, with renewals for ever, reserving half a-year's rent as a fine on each renewal of any plot for a house and garden in the town of Birr, (Parsonstown,) and of any quantity of land not exceeding ten acres, English statute measure, to be held therewith, &c.

These articles were registered on the 2d July 1754, and carried into effect by a private act of Parliament, passed on the 29th of April 1758.

The Respondent is the eldest son of this marriage.

By deed, leading the uses of a recovery, which was suffered accordingly, dated 20th of October 1779, and made between Sir William Parsons and the Respondent, then Lawrence Parsons, his eldest sou, Thomas Dames, and Jonathan Darby, of the first part; Edward King of the second part; and Robert Close of the third part; the manor and lands were vested in Edward King, and his heirs and assigns, as tenant of the freehold, for the purpose of suffering a recovery, the uses of which are by the deed declared to be as follows:—To the use of such persons, and for such estates, as Sir William and Laurence Parsons, or the survivor, should in such form as therein specified declare, direct, limit or appoint; and for default of and until such declaration, direction, limitation and appointment, to the use of Sir William Parsons and his assigns, for and during the term of his natural life, without impeachment of waste, and with all such powers as he now has over the same, and from and immediately after

1821.

HIGGINS
v.
ROSSE.

his decease, to the use and behoof of Laurence Parsons, his heirs and assigns.

By deed of renewal, bearing date the 30th day of August 1786, made between Sir William Parsons of the one part, and Philip Langton of the other part; reciting the original lease of the 11th day of February 1726, made between Sir William Parsons, deceased, the grandfather of Sir William, party thereto, and Nicholas Pritchett; and also reciting, that Philip Langton, by mesne assignments, or otherwise, was then become entitled to the benefit of the said lease and covenant for the renewal therein contained; and that the *said lease had been frequently renewed*; the deed witnessed, that Sir William Parsons, in pursuance and execution of the said covenant for renewal, did demise and grant unto Philip Langton, the house and garden wherein Robert Gillespie, formerly of Parsonstown, sadler, dwelt, together with the other houses thereunto belonging; as also six acres of land in Lough Guir, formerly in the possession of Philip Langton, deceased; To hold the same, with all the rights, members and appurtenances whatsoever, for the lives of the three persons therein named, and for and during the natural life and lives of all such other person and persons as should from time to time, successively and for ever, be added by virtue of the covenant for perpetual renewal, contained in the said thereinbefore recited lease, subject to the yearly rent and renewal fines reserved and mentioned in the said second-mentioned original lease. This deed of renewal contained a covenant for renewal, similar to the one contained

in the original leases; and like renewals were also executed of the two other leases.

By deed, dated 23d December in the year 1790, and made between Sir William Parsons of the one part, and Philip Langton of the other part, reciting the original lease of 11th of February 1726 to Nicholas Pritchett, and reciting that the same was taken in trust for Philip Langton; the said indenture witnessed, that Sir William Parsons, in pursuance and execution of the covenant of renewal in the said original lease, and in consideration of the rent and covenant in the same, demised and granted all the said lands and premises comprised in the said second-mentioned original lease unto Philip Langton, his heirs and assigns, for the lives of the three persons therein named, and the lives and life of all such other person and persons as should from time to time thereafter be added thereto by virtue of the covenant for perpetual renewal in the said indenture of lease contained, subject to the yearly rent, renewal fines, and covenants in the original lease.

This deed of renewal contained a covenant for perpetual renewal by Sir William Parsons to Philip Langton, in the ordinary form. Like renewals were executed of the two other leases. Sir W. Parsons died in 1791, no appointment having been made under the settlement, whereupon the remainder in fee, for default of appointment, vested in the Respondent.

It did not appear by any direct proof, or otherwise, than by the recital in the deed of 1786, and presumptions from that recital, that the leases, or any of them, had been renewed between the years

1821.

HIGGINS
v.
ROSSE.

1735 and 1786. The rents reserved upon these several leases were from time to time, up to the year 1807, paid to and received by the several persons successively becoming entitled to and seised of the reversion in the lands, including the Respondent.

After the renewals of 1790, two of the *cestui que vies*, named in the deeds of that date, had died, but at what particular time did not appear.

In the Appellant filed a bill in the court of Chancery in Ireland, alleging that he had not until lately received intelligence of the death of the *cestui que vies*; and stating the facts before mentioned, prayed that the Respondent might be compelled to grant renewals of the leases, on payment of the fines due, with interest, which had been already tendered. The Respondent by his answer insisted that the *grantors* of the leases having exceeded the power, the leases were void; whereupon the Appellant filed an amended bill, stating the acceptance of rent under the leases, the possession of the counter-parts by all the successive owners of the reversion, no one of whom had objected to the leases as violations of the power, and that valuable improvements had been made in the premises; under which circumstances the Appellant insisted upon a right accruing by long acquiescence. The answer to the amended bill admitted the fines, and the possession of the counter-parts, but contended that the leases were void on various grounds. The cause was heard before Lord C. Manners in 1811, when the bill was dismissed without costs. In 1815 the Plaintiff in the original bill died intestate, as to the right in the leases. In

1816 the Appellant, as heir at law, revived the cause and brought this appeal.

For the Appellant:—

The case of the Appellant is entitled to particular favour, from an undisturbed and undisputed possession of eighty years under renewable leases; a title which has been termed, "the local law "and the old equity of the kingdom of Ireland,"* *Mayor of Hull* v. *Horner*†; *Eldridge* v. *Knott*‡; citing a case, where (it was said) an act of parliament was presumed ||.

Sir Laurence Parsons, the Respondent's grandfather, was tenant in tail male under the settlement of 24th of April 1683, on which, and the subsequent settlements, the Respondent rested his defence to the original and amended bill of Philip Langton, the complainant below: Sir Laurence Parsons levied a fine of all the property included in the leases; considering him to be tenant for life, his fine operated as a forfeiture of his life-estate, and gave him a base fee until ousted by entry or claim of a person having an adverse title, and there never was such person; all the subsequent owners received the rent upon the leases. If Sir Laurence executed any leases of the property, his fine necessarily had the effect of confirming or establishing them; if he did not execute any leases, but did any act which, in the contemplation of a court of equity, amounted to an agreement to confirm and establish the leases made by his ancestors or predecessors in title, his fine

* 2. Ridgw. Parl. Ca. 405, 406.

† Cowper 102. ‡ Id. 215.

|| By Lord Mansfield. *Quœre.*

1821.

HIGGINS v. ROSSE.

would confirm and establish those leases in equity. Now, Mr. Langton's bills expressly charge, and the Respondent's answers do not deny, that Sir Laurence renewed the subsisting leases; the Respondent's answers also state and insist on Sir Laurence's right to receive the rents, and his actual receipt of them; but he could only have this right in consequence of either having executed, or having agreed to execute, a renewal; which ever it was it was necessarily established by the fine.—*Goodright* v. *Mead and Shiloon**.

Sir William, the Respondent's father, died in 1791, and the Respondent himself received the rents from that time till 1807, when the complainant filed his bill, and all that time had the counter-parts of the leases in his possession; this amounts to an acquiescence in the leases, and an agreement to confirm and establish them.

Suppose that it was competent to the Respondent, when his title accrued, to dispute the lease, having suffered five years to elapse the right is gone. Long acquiescence applies equally to he right of renewal and to the lease.

If such leases or agreements are not to be judicially presumed, there has been an uniform possession by disseisin by the complainant below, and those through whom he derived his title, since the death of Sir William, the Respondent's great great grandfather, the original lessor: And thus the Respondent is reduced to the dilemma of either admitting the validity of the leases, and the clauses for renewal contained in them, or of admitting that a disseisin of the person under whom he claims was made

* 2 Burr. 705.

at a period of about seventy years preceding the filing of the bill in the Court below.

None of the Respondent's objections to the leases, on the ground of their not being warranted by the power of leasing contained in the settlements of 1708 and 1730, can be supported. The covenants for building, &c. apply only to a first lease, and after so great a lapse of time it must be presumed that this is not a first lease, but a confirmation of some prior lease, which probably conformed to the settlement. Besides, the houses having been in fact built as if the covenant had been inserted, the reversioner is not damnified, and equity will aid the defect. According to the argument of the Respondent, no leases could be made by any tenant for life where houses had been actually built, which is contrary to the principle of the decision in *Shannon* v. *Bradstreet.** That the leases are, at all events, conformable to the power in the deed of 1730, which extends to a house and garden, with ten acres, and requires no covenant for building to be inserted. There have been grants under that power, and even where two powers exist, and one is recited in exercising the power; if the act is void under that power, it may be held good under the power not recited. This, in effect and principle, was decided in the case of *Tomlinson* v. *Dighton* †, where the question was, whether it was a conveyance of an interest by a tenant for life, or the execution of a power not recited.

The Respondent, according to his own argument, being a purchaser, is bound by a covenant, the

* 1 S. & L. 60.

† 1 P. W. 149. 10 Mod. 31 & 71.

1821.

HIGGINS v. ROSSE.

covenant for perpetual renewal, of which he had notice at the time of his purchase, although the conantor had no power, *Taylor* v. *Hibbert* *. In this case the Respondent became a purchaser with notice. As to the rent reserved, it must now be presumed that it was the best that could be had. That the three leases are made to one person is not more injurious to the reversioner than if they had been made to three persons.

It was a fraud on Mr. Langton, the complainant below, to permit him to expend the considerable sums of money, proved in the cause to have been expended by him, from the year 1791 (when the Respondent's supposed title to the possession accrued) till 1807, when Mr. Langton filed his bill, in valuable and permanent improvements of the premises, without the Respondent's giving him notice of its being his intention to dispute the right of renewal.

If the Court of Exchequer were of opinion that the leases were void for informality, and that Mr. Langton was not entitled to the renewal prayed for in his bill, the Court ought to have decreed a renewal of the leases on such terms as the power warranted, and the equity of the case required.

For the Respondent :—

The leases in question appear to have been intended as an evasion of the limit of the leasing power, in point of extent of land to be demised, and were designed as a fraud upon it, these three leases being all made and dated on the same day, for the

* 2 Ves. j. 437.

same term, for the same lives, and to the same person, were manifestly a contrivance to let to one person one piece of ground, containing in all about fifteen plantation acres, but so let in three leases instead of one, merely to evade the settlements; they are therefore to be considered as one lease, and not as three distinct leases, and thus as demising a greater quantity of land Sir William, the lessor, was permitted by the said power so to let: It appears that the lessee and his family have ever since continued in the possession of the lands as if included in one single lease; and this attempt to evade the settlements, in taking three leases instead of one, clearly proves, that the lessee had full notice of the settlements, as such division could be for no other purpose than a fraudulent evasion of them.

The leases contain no covenant for building on the land not already built upon, nor for keeping in repair houses already built, for want of which the whole object and policy of the leasing power was liable to be defeated, the estate loaded with a perpetual lease, and the tenant at liberty either not to build or to let the houses fall, and convert the ground to other purposes quite foreign from the improvement of the town *.

The attempt in the court below to sustain the renewals of 1786 and 1790, as substantive demises, to take effect under the then existing powers, was not warranted by the terms of those powers.

The articles of 1754, and act of Parliament, omit the power of leasing a house and garden for

* *Jones* v. *Verney*, Willes, 169.

1821.

HIGGINS v. ROSSE.

ever, which was contained in the preceding settlement of 1730, and only authorize the leasing a plot for a house and garden, &c.

This omission must be considered as having been purposely made, and with the obvious intent in future of restraining the tenant for life from making a perpetual lease of a house, &c.; and it would appear that the reason of the family having thus by the subsequent settlement of 1754, left out the power of leasing a house, and confined and restricted the power of leasing to a plot for a house, arose from the experience they had, that the power of leasing a house already built did not promote sufficiently the object they had in view, namely, the improvement of the town of Parsonstown, and therefore they wisely confined the leasing power to a plot for a house.

The omission was evidently with a view that no lease with covenant for perpetual renewal should be from thenceforward, except of plots for houses, &c. and this intention could not have been effected without obliging the tenant to build; that is, all such leases should contain building covenants, for otherwise, without a covenant being imposed on the tenant to build, the plot might for ever remain unbuilt upon, and the intention of the parties be entirely defeated; and as those renewals, as well as the original leases, omit any covenants for building, they are on that score as objectionable as the original leases.

Neither a court of law nor equity would give so different an effect to the act of a tenant for life, intending merely to renew a lease which he con-

sidered valid, as to make it operate as an original substantive demise, when he must have supposed that he was only executing a renewal in virtue of a covenant supposed to attach on the estate. In the one case, the lessor makes no estimate of the present value, which in the other he does; and most certainly in 1786, when he executed the first renewal, Sir William, had he conceived that he was making an original lease, would have reserved more rent than was reserved in the original leases in 1726, upwards of 60 years before.

As to the points of acquiescence and improvements when investigated, there is nothing resulting from these considerations that could alter or affect the rights of the Respondent, or that ought in any manner to influence a court of equity on the subject, especially as the point was not raised by the pleadings, or made matter of argument in the court below.

As to the attempt made to support those leases, as a charge upon the ultimate reversion which was vested in the lessor in 1708, that question was not raised in the pleadings or arguments below; if it had been raised, it might easily have been answered. It will be found that that reversion has been long since barred and extinguished by the recoveries suffered in Hilary 1754 and Michaelmas 1779, of the intervening estates-tail, under which recoveries the Respondent claims.

These leases, having been executed by the tenant for life, can only take effect out of the powers annexed to his estate; but to do so they should have been made conformable to all the substantial conditions of those powers; and although they might charge

1821.

HIGGINS v. ROSSE.

the ultimate reversion, had it come into possession, yet as the Respondent does not claim under that reversion, but as a purchaser under the estate-tail, (enlarged into a fee by the recovery of 1754,) there can be no ground at law or in equity to bind his estate by any leases not conformable to the leasing powers.

For the Appellants, *The Attorney-General*, *Mr. Butler*; (and *Mr. Sugden*, who replied in the absence of the Attorney-General.)

For the Respondents, *Mr. Hart* and *Mr. Wetherell.*

19 Feb. 1821.

In the course of the argument upon the question, as to the effect of the fines levied by Sir Laurence, Lord Redesdale observed, that the deed of 1730 altered the state of the reversion, which, according to the limitations of that deed, was not in the person who levied the fines, so as to cause a merger.

Upon the question as to the effect of the leases of 1786 and 1790, he observed that they purported to be renewals merely, and not original leases under a power.

Upon the conformity of the lease to the power the Lord Chancellor observed, that the power was to lease six acres, with covenants for building: That the leases were of houses and gardens, together with six acres of land, and containing no covenant for building.

Upon the question as to the effect of the lease of 1786, and the possibility of its operation under

the power in the deed of 1730, Lord Redesdale observed, that, when that lease was granted, Sir W. Parsons was bound by the articles of 1754, and the provisions of the act by which they were carried into effect; and with respect to the fines by Sir Laurence, (he again observed) that the settlement of 1730 had limited the reversion to several brothers in succession; that the immediate reversion had been taken out of Laurence by that deed; and that the ultimate reversion in fee to Laurence, limited by that deed, was not the immediate reversion expectant upon the estates-tail.

On the 9th of March 1821 the judgment was affirmed without further observation.