

reserved, but what the landlord could obtain from a respectable tenant at the time the grievance complained of was committed, *i. e.* at the time of delivering the declaration in ejectment, if the premises were then to be let. But the plaintiff is only entitled to single costs, *ibid.* The remedy is not confined to cases where the ejectment proceeds to a writ of possession, but includes a case where the landlord, before judgment, discovers the fraud and is let in to defend.

XIV. Use and occupation.—At common law, *assumpsit* did not lie to recover rent upon an implied promise, though it did upon an express promise to pay it, as in *Johnson v. May*, 3 Lev. 150; see *Hoffar v. Dement*, 5 Gill, 132. Debt lies for use and occupation generally, without setting forth the particulars of the demise, *Wilkins v. Wingate*, 6 T. R. 62; *Stroud v. Rogers*, *ibid.* n. where to such a count the defendant demurred, assigning for causes, that it did not set forth any demise of the premises, for what term they *were demised, nor what rent was payable, nor for **751** what length of time the defendant held and occupied the premises, nor how much rent was payable, nor when the sum of, &c., thereby supposed to be due, became due, nor for what space of time, but the plaintiff had judgment. And in *Egler v. Marsden*, 5 Taunt. 25, it was held that debt for use and occupation does not depend on the Statute and is not a local action; therefore it need not be shewn where the premises are.

The meaning of this section²¹ is that an action on the case may be brought, and though it appear that there was a contract under a certain rent reserved, yet the plaintiff shall recover a reasonable compensation for the use of that which he goes for. But mere occupation is not enough, *Stoddert v. Newman*, 7 H. & J. 251. The action is one of contract, and founded on the relation of landlord and tenant.²² If the defendant came in as a trespasser, it cannot be maintained, *Stockett v. Watkins*, 2 G. & J. 326. It requires, therefore, to support it evidence of an occupation by the permission of, and under a contract *with the plaintiff*, and though the title on the part of the plaintiff and occupation by the defendant may, in the absence of any other evidence, be a *prima facie* case from which such a

²¹ See *Carpenter v. U. S.*, 17 Wall. 489; *Swem v. Sharretts*, 48 Md. 408.

²² One tenant in common who occupies the common property cannot be held liable to his co-tenant for use and occupation, unless there has been an actual ouster of the latter. *Israel v. Israel*, 30 Md. 120; *McLaughlin v. McLaughlin*, 80 Md. 116. *Contra*, however, where he has obtained possession of the property under a lease from his co-tenant and continues in possession as tenant by sufferance after the expiration of the lease and pending negotiations as to the terms of his continuing in possession. *Leigh v. Dickeson*, 12 Q. B. D. 194; 15 Q. B. D. 60. Cf. *Hill v. Hickin*, (1897) 2 Ch. 579.

In an action against an infant who had obtained a lease of a furnished house on implied representations that he was of age, the lease was declared void, possession was ordered to be given up and an injunction was granted restraining the defendant from parting with the furniture, but it was held that he was not liable for use and occupation. *Lempriere v. Lange*, 12 Ch. D. 675.