contract may be inferred, yet where the letting has been by another party the plaintiff will not be allowed to recover. So where he fails to prove title or actual contract with himself. And, where the letting has been by another party, mere notice given by the plaintiff (even though he has the title) to pay the rent to him will not convert the occupation into an occupation by his permission and under a contract with him; for such notice, unless assented to by the tenant, does not create a new contract, and can only enable the party to bring ejectment to recover possession of the premises, Churchward v. Ford, 26 L. J. Exch. 354. Accordingly, in Stoddert v. Newman, 7 H. & J. 251, the Court laid it down, that to support such an action a demise must be shown, or some proof given of the relation of landlord and tenant. There the evidence to support a count for use and occupation by the defendant, who though executrix of A. was not charged as such in that count, was a letting to A. who was dead, and it was held insufficient, as, without more, excluding the inference that the defendant held under a demise to her. *Non constat*, said the Court, that she was executrix of A., and no other person had a right to possess and hold the demised premises. The executor might assign, but the lessor (the plaintiff) cannot be presumed to have had any thing to say to the premises after he leased them to A. The same principle was recognized in Stockett v. Watkins, 2 G. & J. 326, confirmed in Cole v. Hebb, 7 G. & J. 20, where the defendant had all along been in the attitude of a mortgagor seeking to redeem premises as mortgaged only, and it was there held that his acknowledgment of accountability to the plaintiff, upon the issue of a pending suit in favour of the latter, was nothing. And see De Young v. Buchanan, 10 G. & J. 149; Marshall v. McPherson, 8 G. & J. 333. So in Hoffar v. Dement, 5 Gill, 132, A. having died seized of certain lands, leaving four children, B., without authority, sold the lands to C. who entered. The lands were subsequently sold by B. to C. under a decree in Chancery. *One* of the heirs afterwards sued C., in an action of use and occupation, for her share of the rent of the lands during the period between the two sales. But it was held that the action could not be sustained, for C. entered under the contract of purchase, and not under any agreement or demise from the heirs of A. jointly or severally. See also Benson v. Boteler, 2 Gill, 74, from which it appears that a party cannot convert another, who has entered as purchaser from him, into his tenant, by a subsequent agreement, which may be construed as a new contract, to take back the premises. And generally, a contract cannot arise by implication of law from circumstances, the occurrence of which neither of the
752 *parties ever had in their contemplation, *per* Mansfield C. J. in Kirtland v. Pounsett, 2 Taunt. 145,[23] where a purchaser under a contract of

[23] The doctrine of this case was considered and affirmed in Carpenter v. U. S., 17 Wall. 489. It was there held that one who enters into possession of land by virtue of an agreement, or even a mere understanding, that he is to purchase it, cannot be held liable for use and occupation, though the purchase be actually concluded. It was said that, if the purchaser was entitled to anything, it was to interest on the purchase money from the time possession was taken until the price was paid, and this he should