year to year be determined by a regular notice to quit, an inadvertent detention of the key by the tenant, who has removed from the premises, for two days (one of them Sunday) after the term is no such evidence of use and occupation, as will make him liable for another quarter, Gray v. Bompas, 11 C. B. N. S. 520.

In an action for use and occupation the rent is considered as accruing *de die in diem*, Packer v. Gibbins *supra*. If there be a demise not under seal, by which a certain rent is reserved, this may be made use of as evidence of the *quantum* of damages. And in a case, where it came out on cross-examination that there was an agreement in writing but not stamped, Lord Eldon held that, there being a specific contract between the parties, the plaintiff was bound to shew what the contract was; for it might contain clauses which would prevent the plaintiff from recovering, and others for the benefit of the defendant which he had a right to have shewn; but, as it was not stamped, it was not admissible in evidence, and the plaintiff was nonsuited, Brewer v. Palmer, 3 Esp. 213. At present, under the Acts of Congress, such instruments may be stamped on payment of the stamp-duty and a penalty.[29] But in Tomlinson v. Day, 2 Brod. & Bing. 680, a lessee took a farm under an agreement which he never signed, and the lessor failed, on his part, to perform it in the chief object which induced the lessee to propose becoming a party to it, viz: in giving the lessee an exclusive right of sporting over the manor within which the farm lay. And it was held that the defendant in this action may shew an eviction of the whole or part, and that, in case of an eviction of part (there the exclusive privilege of sporting, which, as it turned out, the lessor had no power to grant) the jury must ascertain, *independently of any **754** agreement, what the defendant ought to pay. If there has been no agreement fixing the rent, the plaintiff proves the sum for which the premises could be reasonably rented, or, in case of a previous occupation by the defendant, the rent paid by him. Upon the principle that a tenant, simply holding over after the expiration of the term, is considered as holding under all the stipulations of the original lease, so far as they are applicable to his new situation (*i. e.* to a tenancy from year to year),[30] it was held in De Young v. Buchanan *supra*, where a landlord had given previous notice that he should demand a higher rent for a new term in the premises, and the tenant refused to agree to it, that the former could not recover such increased rent in this action. But if nothing is said, it does not follow that the price is to go on as before; and therefore if the tenancy is continued beyond the term for which it was originally taken, and the amount of rent for the new holding is not arranged, the jury may give the landlord a larger sum for the occupation, if there are circumstances to show that an increased rent was expected by him, and this expectation was not repudiated by the tenant, Elgar v. Watson, 1 Car. & Marsh. 494.

XV. **Apportionment.**—"Rent," said the Court of Appeals in Martin v. Martin, 7 Md. 379, recognized in Dailey v. Grimes, 27 Md. 440, "with the

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[29] See Wingert v. Ziegler, 91 Md. 318, as to the effect of a failure to affix a stamp to an assignment of mortgage under the former Internal Revenue Stamp Act of 1898.

[30] Hall v. Myers, 43 Md. 450; Hobbs v. Batory, 86 Md. 68.