

THRUSTON ET AL. vs. HINDS.

Justices of the Peace possess no jurisdiction in actions for use and occupation where the title to the land comes in controversy, as held in *Fitzgerald v. Beebe*, 2 Eng. R. 305.

But where there is no controversy as to title, it is not essential to the jurisdiction of a Justice of the Peace, that there be an express agreement or contract for rent; the action will lie upon an implied as well as an express agreement.

Writ of Error to the Crawford Circuit Court.

The facts are stated by the court.

WALKER & GREEN, for plaintiffs.

PASCHAL & OGDEN, contra.

OLDHAM, J. This was a suit brought before a Justice of the Peace of Crawford county for use and occupation. Upon the trial the Justice rendered judgment in favor of the plaintiffs, and the defendant appealed to the Circuit Court. Upon the case coming into the Circuit Court the appellant appeared and moved the court to quash the proceedings before the Justice of the Peace for want of jurisdiction, the appellees admitting upon the record "that this suit was brought on account for the use and occupation of a certain tract of land so specified in their account, and that no *express agreement* or contract was ever made or entered into by or between the said parties relative to the rent or use and occupation of said land." The court sustained the motion because the Justice had no jurisdiction of the subject matter in controversy. It is not essential to the jurisdiction of the Justice of the Peace, that there should be an "*express agreement or contract.*" The action will lie upon an implied, as well as express agreement.

The jurisdiction of Justices of the Peace in actions for use and occupation was discussed in *Beebe v. Fitzgerald et al.*, 2 Eng. Rep.

305, in which it was held that they had no jurisdiction in such cases where the title to the land came in question. We see nothing upon the record in this case which excludes it from the Justice's jurisdiction.

Judgment reversed.

