

Original
No. 7313

KENNETH E. BLEVENS

v.

NEW ENGLAND TELEPHONE AND TELEGRAPH COMPANY

April 30, 1976

Kenneth E. Blevens, pro se, by brief and orally.

McLane, Graf, Greene, Raulerson & Middleton and Arthur G. Greene
(*Mr. Greene* orally) for the defendant.

MEMORANDUM OPINION

This petition for writ of certiorari seeks a determination that the district court erred in dismissing plaintiff's small claim for rent for the maintenance of a guy wire and stub pole across and on plaintiff's property on the ground that the title to real estate was involved and that it therefore lacked jurisdiction. RSA 502-A:14 (Supp. 1975); RSA 503:1 (Supp. 1975); N.H. CONST. pt. 1, art. 20.

Defendant has submitted the affidavit of one of its engineers that the guy wire and stub pole in question have been maintained in the same location for thirty-forty years. *Flewelling v. Roby*, 97 N.H. 97, 82 A.2d 83 (1951). Defendant's claim to an easement raises the question therefore as to whether plaintiff's title is such as to entitle him to charge defendant rent. This sufficiently involves the title to real estate to remove the case from the jurisdiction of the district court. *Gowen v. Swain*, 90 N.H. 383, 10 A.2d 249 (1939); *Hatch v. Hillsgrove*, 83 N.H. 91, 138 A. 428 (1927); *Allen v. Smith*, 375 S.W.2d 874 (Mo. App. 1964); *Ladd v. Teichman*, 359 Mich. 587, 103 N.W.2d 338 (1960).

Petition dismissed.

KENISON, C.J. did not sit; the others concurred.