The case at bar was distinguishable from King v. Evans; and the reasoning in that case was inapplicable to the language used by the testator in this case—"respective issues in fee." The words "in fee" do not necessarily mean "in fee simple"—they may mean "in fee tail." It is unnecessary to give to the word "issue" any other than its primary meaning, i.e., descendants, but rather effect should be given to both expressions, as it is possible to do.

The testator, however, in this case, had interpreted his own language and shewn that he used "issue" as meaning "children."

It was properly held, therefore, that Marietta took an estate for her own life only.

Appeal dismissed; costs of the appeal out of the estate.

FIRST DIVISIONAL COURT. FEBRUARY 21ST, 1916.

*DAVEY v. CHRISTOFF.

Landlord and Tenant—Lease of Theatre with Furniture and Equipment—Refusal of Lessee to Transfer License—Damages—Retention of Sum Deposited by Lessee as Security—Rent of Premises—Inadequacy of Heating—Implied Stipulation—Fitness for Habitation—Damages for Breach.

Appeal by the defendants from the judgment of MASTEN, J., ante 291, 35 O.L.R. 162; and cross-appeal by the plaintiff as to the damages awarded to him, which, he contended, should be increased by $200.

The appeal and cross-appeal were heard by MEREDITH, C.J.O., GARROW, MACLAREN, MAGEE, and HODGINS, JJ.A.

W. A. Henderson, for the defendants.

J. W. Payne, for the plaintiff.

MEREDITH, C.J.O., delivering the judgment of the Court, said that the question of the implication in such a case as this of a warranty that the demised premises were fit for the purpose for which they were intended to be used, was an important one, and he had been unable to discover any direct authority in favour of implying such a warranty; while it was abundantly clear that such a warranty was not to be implied in the case of a demise of realty only.