

HIGH COURT DIVISION.

MIDDLETON, J.

JUNE 21ST, 1915.

*BRYMER v. THOMPSON.

Landlord and Tenant—Lease of Flat in Building—Implied Stipulation to Furnish Heat—Collateral Contract—Statute of Frauds—Damages for Inadequate Heating.

The defendant, the owner of a building, placed it in her husband's hands for management. As her attorney, he leased the basement and ground-floor to one McArthur, who covenanted to heat the whole building—the defendant to pay for one-third of the fuel consumed. The defendant then placed the leasing of the remaining floors in the hands of an agent, who listed the property as "steam-heated flats." The system of heating provided was adequate for the contemplated purpose. The plaintiff rented the top-flat of the building from the agent as a steam-heated flat; but the lease signed by the plaintiff made no mention of heating. During the currency of this lease, the defendant, or McArthur for her, supplied steam-heat, but the supply was inadequate—not from any defect in the heating-plant, but from inefficient operation.

This action was brought for damages for the defendant's failure to heat the top-flat adequately.

The action was tried without a jury at Toronto.

G. N. Shaver, for the plaintiff.

J. W. Bain, K.C., and J. M. Forgie, for the defendant.

MIDDLETON, J., delivering a considered judgment, referred to the rule stated by Lord Esher in *Hamlyn & Co. v. Wood & Co.*, [1891] 2 K.B. 488, that there is the right to imply a stipulation in a written contract where, "on considering the terms of the contract in a reasonable and business manner, an implication necessarily arises that the parties must have intended that the suggested stipulation should exist." Reference was also made to *Ex p. Ford* (1885), 16 Q.B.D. 305, and *Lamb v. Evans*, [1893] 1 Ch. 218.

There was here an implied promise and contract on the part of the landlord that the premises leased should be adequately and sufficiently heated; and there was nothing in the fact that

*This case and all others so marked to be reported in the Ontario Law Reports.