(1843), 11 M. & W. 5, and Wilson v. Finch Hatton (1879), 2 Ex. D. 336, 344, applied to the case of a furnished theatre.

In Davey v. Christoff, the Court specially guarded itself against unsettling the well-established rule of law that in the case of a demise of real property only, a condition or warranty that it is fit for the purpose for which it is intended to be used will not be implied.

This case fell within the rule. The facts were not such as to raise an implied warranty that the premises were habitable.

The judgment for the defendant should be set aside, and judgment entered for the plaintiff for $219.34.

The circumstances were exceptional. The defendant had suffered considerable loss from no fault upon his part, except the refusal to occupy the premises longer. The plaintiff company was not entirely free from fault. The condition of the premises must have been known, and more effective means might have been used to make them habitable.

The plaintiff company was entitled to the costs of the appeal, bu no costs of the Court below.

HIGH COURT DIVISION.

CLUTE, J. JANUARY 14TH, 1918.

*OTTAWA SEPARATE SCHOOL TRUSTEES v. QUEBEC BANK.

Constitutional Law—Act respecting the Roman Catholic Separate Schools of the City of Ottawa, 7 Geo. V. ch. 60 (O.)—Ultra Vires—Decisions on Previous Act, 5 Geo. V. ch. 45—Moneys Received by Commissioners Appointed under that Act—Moneys Paid by Bank to Commissioners—Recovery by Board of Trustees—Exception as to Moneys Properly Paid for Salaries and Control and Management—Deductions—Reference—Counterclaim—Costs.

The three actions consolidated by order of MIDDLETON, J., on the 19th March, 1917 (see Ottawa Separate School Trustees v. Quebec Bank, 39 O.L.R. 118), were tried as one action, by CLUTE, J., at Ottawa.

The defendants were: the Quebec Bank; the Bank of Ottawa; and Thomas D'Arcy McGee, Arthur Charbonneau, and the executors of Dennis Murphy, these three individuals composing