

benefit of the home, it may be done through the reeve of the town, who is a member ex officio of the county council.

The town council would be justified in applying the income to the care and maintenance of aged women in a private house or elsewhere than in "a home for aged women."

Reference to *Morrison v. Bishop of Fredericton* (1909), 4 N.B. Eq. 162; *Power v. Attorney-General for Nova Scotia* (1903), 35 S.C.R. 182; *Jarman on Wills*, 5th ed., p. 200; *Theobald on Wills*, 7th ed., p. 375; *Re Trenhaile* (1911), 3 O.W.N. 355; the *Mortmain and Charitable Uses Act*, R.S.O. 1914 ch. 103, secs. 2, 14.

Costs of all parties out of the estate.

MASTEN, J.

APRIL 27TH, 1917.

### OSBORNE v. ROOS.

*Landlord and Tenant—Lease of Part of Building for Theatre—  
Covenant of Landlord to Keep Demised Premises Heated—  
Breach—Damages.*

Action for damages for breach of a covenant; tried without a jury at Kitchener.

J. M. McEvoy and J. A. Scellen, for the plaintiff.

M. K. Cowan, K.C., and H. J. Sims, for the defendant.

MASTEN, J., in a written judgment, said that the plaintiff was the owner of a moving picture "show" and tenant of the defendant's premises upon which the "show" was operated. In the lease the defendant covenanted to "keep the said premises properly heated at his own expense." The plaintiff and one Zuber occupied different parts of the same building—the defendant's building—Zuber using his part as an hotel. The boiler from which the theatre was supplied with heat was in the basement of the Zuber hotel, and from this as a common source was derived the steam for heating both the hotel and the theatre; and it was Zuber's duty on behalf of the defendant to keep the theatre warm.

The learned Judge finds that the theatre was not at all times kept adequately warm—that the covenant had not been fulfilled.