

legislation, becomes illegal, the parties are absolved from it: *Brewster v. Kitchell* (1698), 1 Salk. 198; *Metropolitan Water Board v. Dick Kerr and Co. Limited*, [1918] A.C. 119.

Subsequent events having rendered the performance of this covenant illegal, the defendant is excused from performing it.

The appeal should be allowed with costs, the judgment below set aside, and the action dismissed with costs.

CLUTE, J., agreed in the result.

RIDDELL, J., also agreed, for reasons stated in writing.

MASTEN, J., agreed with MULOCK, C.J.Ex.

Appeal allowed.

SECOND DIVISIONAL COURT.

JUNE 4TH, 1920.

*BOONE v. MARTIN.

Landlord and Tenant—Assignment by Insolvent Tenant for Benefit of Creditors—Lease—Yearly Rent Reserved—Covenant by Tenant to Pay Municipal Taxes—Failure to Pay—Payment by Landlord—Assessment Act, secs. 37, 94, 95—Claim to Preferential Lien upon Assets of Tenant—Construction of Covenant—Right of Distress—Subrogation—Surety—Person Liable with Tenant—Mercantile Law Amendment Act, sec. 3.

Appeal by the plaintiff from the judgment of ROSE, J., ante 28.

The appeal was heard by RIDDELL, KELLY, MASTEN, and LOGIE, JJ.

J. W. McCullough, for the appellant.

Gordon N. Shaver, for the defendant, respondent.

THE COURT dismissed the appeal with costs.