dollar on some districts to 12½ mills in others, while in districts 13 and 18 no tax was levied. That by reason of a sudden and unexpected rise in the value of real estate between the time when said taxes were levied and the time when the property was assessed in the month of January, 1890, said levies will produce more money than will be needed for school purposes in the districts that levied the same, and that the excess is so great as to be oppressive; that on the 13th day of March, 1890, the Legislative Assembly of Utah passed an act making the entire city of Salt Lake one school district, and embracing within the same all the Territory within said twenty-one districts, and abolishing said districts, and providing that the school houses and other school property, belonging to said several school districts, shall become the property of the newly created school districts in Salt Lake City, and that any levy of taxes and assessments for school purposes that have been or was then being made should be continued and completed and the taxes should be collected and used by the board of education of the school district of Salt Lake City for school purposes; that by reason of unequal percentage of taxes levied by the several districts, the burden of taxation for the support of the schools in the new district of Salt Lake City, for the school year beginning July 1st, 1890, is rendered unequal, and that taxes levied for the special use and benefit of the districts will, under the present law, be used for the benefit of portions of the new district in which but a small levy, or none at all, was made; that the complainants are residents and taxpapers owning property within certain of the old districts of said city, and they ask that the defendants be restrained from collecting said taxes, and that the tax be cancelled. In the case of James Lowe et al. vs. L. G. Hardy et al., the complaint alleges that the complainants are taxpayers in what was formerly School District No. 11 in said district; that in December, 1889, the people of the district voted a levy of 10 mills on the dollar for the purpose of paying off a debt of $5500 then existing against said district, and which would have produced under former valuations the amount required, but that owing to the great advance in value, under the assessment made in 1890, $10.927 in excess of the amount necessary to pay said debt will have to be paid by the taxpayers of said district, and which, if collected, will figure to the benefit of the entire new district of Salt Lake; that a levy of four mills on the amount of the assessed valuation of the property of said district, for 1890, would raise sufficient to pay off said debt, which amount complainants aver a willingness to pay, and ask that the other six mills of said levy be cancelled and its collection enjoined.

Upon presentation of these complaints a temporary restraining order was issued and served on defendants, and they were also required to appear and show cause why an injunction should not issue restraining them from collecting said tax. The defendant appeared and filed a demurrer to the complaint in each case, upon the ground that the complaint did not contain facts sufficient to constitute a cause of action or to entitle the plaintiffs to the relief demanded, or any relief whatever.

It will be impossible to discuss all the points urged by the very able and learned counsel for the plaintiffs against the validity of these taxes, without extending the opinion to too great length.

I shall content myself, therefore, by briefly referring to those principles relied upon.

First—It is contended that by abolishing the several school districts, and the repeal of the law under which the taxes were levied and assessed and before the assessment had been completed and the tax placed on the tax collector's books, that the taxes themselves were abolished and all further proceedings in relation to said taxes were rendered illegal and void.

Second—That the legislature had no power to appropriate taxes levied upon themselves by the old school district for their own use, and not yet collected, to the use and benefit of the new district, composed in part of the territory not contributing thereto.

Third—That the tax is illegal and void as a tax for the new district, became unequal and not levied under a uniform rule, applicable alike to all portions of the district.

It is undoubtedly the general rule in the construction of the statutes that, when an act of the legislature is repealed, it is to be considered (except as to transactions passed and closed) as if it had never existed. But this rule is not universal, and whether applicable in a particular case depends upon the terms of the repealing act or the circumstances of the case. An act repealing a statute may provide that it shall not go into effect until a future day, in which case the former law on the subject will remain in force until that day, and business may be transacted and rights acquired and enforced under the old law until the repeal takes effect, or if the repealing statute is to take effect immediately, the legislature may, by a saving clause, provide that rights accrued under the former law may be enforced, and that actions already begun may be prosecuted to final determination (Endlich on statutes, Section 483 6), but a saving clause has been held not to be necessary to authorize the collection of the tax where the statutes under which it was laid was repealed after the tax had been assessed, but before it had been collected, where such collection was in accordance with what was deemed the intention of the legislature, (Town of Belvidue vs. Warren R.R. Co., 34 N. J. L. 193), in that case, the court says the retroactive effect which is to be given to statutes is largely a question of intention, and that although in criminal or penal matters it may be unobjectionable to require express words in the repealing act, preserve punishment and penalties, yet, nevertheless, when rights are given, either to an individual or to the public, it is obvious that a somewhat less arbitrary and inflexible test should be resorted to.

By section 115 of the Act in question in these cases, the existence of the old school district comprising what is now the district of Salt Lake City, and also the terms of office of the trustees of said districts, were continued until July 1st, 1890; so that the taxes voted by these districts upon themselves had been levied under the former statutes prior to the time when the old districts ceased to exist, and as the proceedings for the collection of the taxes, after the return of the assessment roll by the assessor, do not depend upon the statute repealed, these cases come within the rule laid down in the New Jersey case above referred to. But the Legislature did not leave the question of its intention as to the collection of these taxes to construction, but in express terms provided that the repeal of the old law should not have the effect to invalidate taxes levied by the old districts. Section 135 provides as follows: viz: "Nothing in this Act shall be construed as intended to abate, impair or invalidate any levy of taxes or assessment therefore which has been or is now being made in any school district or county in this territory, and all such assessments shall be continued and completed and the taxes levied shall be collected in the manner provided by law."

If the Legislature had its power to provide that the school houses of the old districts, or other property or money on hand, should become the property of the new district, no good reason can be given why it could not provide that taxes levied by the old district, but not yet collected, should be collected and become the property of the new district. The authorities are all to the effect that municipal corporations, or quasi corporations, such as towns, cities, counties or other political subdivisions, are but the creatures of legislative power, and subject to its control. These corporations may be enlarged, diminished, divided, abolished, or two or more may be consolidated as the Legislature may deem best. (Dillon on Municipal Corporations, Sec. 56.) Upon a division of such corporations the legislature may apportion the common property and the common burdens as to them shall seem reasonable and equitable, and may even go the extent of providing that a certain portion of the property of the old town shall go to the new corporation. (Laramie County vs. Albany County et al., 92 U. S. 307. Dillon on Municipal Corps. Sec. 63.)

In the case of Laramie County vs. Albany County above referred to, the Supreme Court of the United States, while admitting that injustice and hardship may be suffered in some cases, says the question is a legislative and not a judicial one, and that the power to prescribe the rule by which a division of the