The Supreme Court of the United States dismissed a bill in equity of a creditor seeking for relief. It decided that the property held by the repealed corporation for public uses, such as public buildings, wharves, fire engines, and, generally, all property held for governmental purposes, could not be subjected to the payment of the debts of the city. It further decided that upon a repeal of its charter such property passed under the immediate control of the State, since the power delegated to the city in that respect had been withdrawn.[1] It also decided that the private property of individuals could not be subjected to the payment of the debts of the city, except through taxation, and that the power of taxation being legislative it could not be exercised otherwise than under the authority of the legislature.[2] As to private property — that is, such as was owned by the municipality, not for public or municipal uses — it would of course be liable to the claims of creditors, but subject thereto, it would be under the control of the legislature.

since the Revolution extended our knowledge upon this intricate subject. The case of Rex *v.* Amery, 2 Term R. 515, has exerted much influence upon text-writers. The questions were, whether a judgment of seizure *quosque* upon a default was final, and if so, whether the king's grant of pardon and restitution would overreach and defeat a charter granting to a new body of men the same liberties, intermediate the seizure and the pardon. The king's bench, relying upon the Year-Book, discovered that it did not support the conclusion drawn from it, and Chief Baron *Eyre* says that "Lord *Coke* had adopted the doctrine too hastily." The discussions upon this case show how much the knowledge of the writ of *quo warranto*, as it had been used and applied under the Plantagenets and Tudors, had gone from the memories of courts and lawyers. 4 Term R. 122 : Tan. on *Quo War.* 24. In Colchester *v.* Seaber, 3 Burr. (1866), where the suit was upon a bond, and the defence was that certain facts had occurred to dissolve the corporation, and that the creditor's claim was extinguished on the bond, Lord *Mansfield* said, "Without an express authority, so strong as not to be gotten over, we ought not to determine so much against reason as that parliament should be obliged to interfere. The question occurs here, Could parliament interfere? And the answer would be by their authorizing a suit to be brought, notwithstanding the dissolution. These are all cases of municipal corporations where the corporators had no rights in the property of the corporation in severalty."

[1] Substantially the same principles as to the effect of the dissolution of a municipal corporation by a repeal of its charter upon its property rights, are laid down in the opinion of Mr. Justice *Field* in Broughton *v.* Pensacola, 93 U. S. 266 (1876), at pp. 268, 269 ; noted *infra*, sec. 170, note.

[2] Meriwether *v.* Garrett, 102 U. S. 472 (1880). Precisely what the court means by the statement "that the power of taxation is legislative and cannot be exercised otherwise than under the authority of the legislature" remains to be determined in that tribunal. It certainly meant in that case that the power could not be set in motion by a bill in equity. Whether it meant that the power of taxation as a means of paying the debts of the repealed corporation did not survive such repeal and the legislative prohibition of the exercise of such power, can only be known when this precise question arises for judgment.

§ 170 (114). **Rights of Creditors on a Dissolution.** — The rights of creditors of municipal corporations are elsewhere more fully considered.[1] The doctrines of the Supreme Court of the United States may be thus briefly summed up : —

1. The rights of creditors, based upon the obligation of their contracts, are protected by the Constitution of the United States against subsequent legislation impairing the same.

2. It has often been decided, and is the settled doctrine of the Supreme Court, that the remedies subsisting in a State when and where the contract is made and is to be performed, are a part of its obligation, and that any subsequent law of the State which so affects those remedies as substantially to impair and lessen the value of the contract, is forbidden by the Constitution of the United States, and is therefore void. Applying this principle, it is held, that if the municipality agrees, as a part of its contract, that the creditor shall have the right to a special tax, the statute giving this right cannot as to such creditor be repealed, unless there be substituted in its place a remedy legally equivalent in value and efficacy.[2]

3. The legislature in its sympathy with insolvent and repudiating municipalities has sometimes gone so far as absolutely to repeal their charters, and in some form to substitute or authorize new municipal organizations in their place. Instances of such legislation in respect of the cities of Memphis, of Brownsville, of Mobile, and of some other places, are given in the notes to this section. The State's plenary power over its municipal corporations to change their organization, to modify their method of internal government, or to abolish them altogether, is not restricted by contracts entered into by the municipality with its creditors or with private persons. An absolute repeal of a municipal charter is therefore effectual so far as it abolishes the old corporate organization ; but where the same, or substantially the same inhabitants are erected into a new corporation, whether with extended or restricted territorial limits, such new corporation is treated as in law the successor of the old, entitled to its property rights, and subject to its liabilities.

4. As to the mode of enforcing such liabilities difficult questions have arisen, some of which cannot at this time be said to be clearly settled. It may, however, we think, be considered as definitively determined by the Supreme Court, that the levy and collection of

[1] *Ante*, chap. iv. ; *post*, secs. 853 *et seq.*, 861 *a*–861 *c*.

[2] Seibert *v.* Lewis, 122 U. S. 284 (1886), noted more fully *post*, sec. 854, stands as the type of this class of cases, — that is, where the corporate existence of the indebted municipality is left untouched by the legislature, but the subsequent legislation impairs the creditor's remedy as it existed at the date of the contract. Many other cases to the same effect are cited in the notes to this section.

taxes cannot be enforced in or by the Circuit Courts exercising equity jurisdiction, but only by appropriate remedies in the court of law, chief among which is the remedy by *mandamus*.[1]

5. If the legislature repeals the charter of the debtor corporation and dissolves it, and makes no provision for its debts, and it has no private property subject to execution, and there is no resource for the payment of such indebtedness but taxation, then if no new or successor corporation be organized, and if no instrumentalities of the taxing power remain subject to the process of the courts, the rights of creditors are, in fact, impaired or destroyed, and it would seem that the courts are in such case practically powerless to prevent this result; and that the creditor's only remedy, which he would be very apt under the circumstances to consider illusory, is to appeal for relief to the legislative department of the government, that is to say, to the very department that of set purpose adopted the hostile enactments that cut down and destroyed his rights and remedies.[2]

[1] Thompson *v.* Allen County, 115 U. S. 550 (1885). Mr. Justice *Miller* here reviews the previous cases on the point, and re-affirms the want of any jurisdiction in equity to levy and collect taxes for the satisfaction of judgments against municipalities. The doctrine of want of jurisdiction in equity is maintained, although the remedy at law by mandamus has proved ineffectual, and no officers can be found to perform the duty of levying and collecting the taxes. See, further, cases cited in the note to this section; also *post*, chaps. xx. and xxii.

[2] Heine *v.* Levee Commissioners, 19 Wall. 655; Rees *v.* Watertown, 19 Wall. 107; Barkeley *v.* Levee Commissioners, 93 U. S. 258; Meriwether *v.* Garrett, 102 U. S. 472; Thompson *v.* Allen County, 115 U. S. 550; Amy *v.* Watertown, 130 U. S. 301 (1888).

Mr. Hare regards such legislation as a fraud upon the constitutional prohibition against the legislative impairment of contract, and consequently invalid. 1 Am. Const. Law, 640. But the view that such legislation is invalid does not seem to be consistent with the decisions of the Supreme Court on the precise point. The exact limits, however, of legislative power, in respect of depriving the creditors, even by a general repeal of the charter and in connection therewith by prohibitions of the exercise of the taxing power in behalf of existing creditors, of the remedies in force when their contracts were entered into, or of others legally equivalent thereto, may, we think, be regarded as yet open to further discussion and more definite ascertainment.

On the general subject of the right of creditors of indebted and dissolved municipalities, see: *Ante*, chap. iv. *passim*; particularly, secs. 69, 70, 71; *post*, secs. 171, 186–189; Cooley, Const. Lim. 290, 292; Cooley, Taxation (2d ed.) 75; Curran *v.* Arkansas, 15 How. (U. S.) 312; Bacon *v.* Robertson, *supra*; 2 Kent, 307, note; Broughton *v.* Pensacola, 93 U. S. 266 (1876): Observations of *Field*, J., p. 269; Milner's Admx. *v.* Pensacola, 2 Woods, C.C. 642 (1875); Laird *v.* City of De Soto, 22 Fed. Rep. 421; Ross *v.* Wimberly, 60 Miss. 345; Brewis *v.* Duluth, 13 Fed. Rep. 334; s. c. 9 Fed. Rep. 747; Garrett *v.* Memphis, 5 Fed. Rep. 860; Indianapolis *v.* Indianapolis Gas Co., 66 Ind. 396, approving text; County Comm'rs *v.* Cox, 6 Ind. 403; State *v.* Trustees, 5 Ind. 77; Coulter *v.* Roberson, 24 Miss. 278; Gelpcke *v.* Dubuque, 1 Wall. 175 (1865); Von Hoffman *v.* Quincy, 4 Wall. 535; Welch *v.* Ste. Genevieve, 1 Dillon C. C. 130; Thomson *v.* Lee County, 3 Wall. 327; Havemeyer *v.* Iowa County, 3 Wall. 294; Butz *v.* Muscatine, 8 Wall. 575; Lansing *v.* Treasurer, &c., 1 Dillon C. C. 522; Soutter *v.* Madison, 15 Wis. 30; Smith *v.* Appleton, 19 Wis. 468; Blake *v.* Railroad Co., 39 N. H. 435; compare Richmond Gaslight Co. *v.* Middletown, 59 N. Y. 228 (1874); *post*, 692; Wolff *v.* New Orleans, 103 U. S. 358; Beatty *v.* The People, 6 Col. 538.

Memphis City Case: The city of *Memphis*, in *Tennessee*, having become insolvent and unable to meet its obligations, the legislature of that State in 1879 *repealed all laws by which it had been incorporated*, and passed a general act establishing what were termed "Taxing Districts" as a "means of local government for the peace, safety, and general welfare" of "communities embraced in the territorial limits of all such municipal corporations" as had, or might have, their charters abolished or might surrender them under the act. In 1881 a similar act established "taxing districts of the second class" for communities having a population of less than 30,000. They were invested with practically all the powers usually conferred upon municipal corporations, except that of levying taxes, which was expressly reserved to the legislature, and that of issuing evidences of indebtedness. It was also expressly provided that the taxing districts, so created, *should not pay*, or be liable for, any debt created by the extinct corporations, and that no taxes collected under the act should ever be used to pay such debts. (For a succinct statement of the principal features of this legislation, see Meriwether *v.* Garrett, 102 U. S. 472, by Mr. Justice *Field*. *Ante*, sec. 169 *a*.) The organizations formed under these acts are uniformly held to be *municipal corporations*. State *v.* Taxing District of Shelby Co., 16 Lea (Tenn.), 240; Lea *v.* State, 10 Lea (Tenn.), 478 (districts of the second class); Luehrman *v.* Taxing District, 2 Lea (Tenn.), 425; O'Connor *v.* Memphis, 6 Lea (Tenn.), 730; (holding also, that a suit against the old corporation may be revived against the taxing district). They may be sued as any other municipality. Uhl *v.* Taxing District, 6 Lea (Tenn.), 610. As to who may vote on proposition to organize under the act see Pepper *v.* Smith, 15 Lea (Tenn.), 551. The prohibitions against exercising the taxing power held to be void so far as they affect the taxing powers of the former corporations, which became a part of the contracts entered into by them. Devereaux *v.* City of Brownsville, 29 Fed. Rep. 742 (*mandamus* issued to the taxing district to enforce, by taxation, the payment of judgments against the old corporations). Compare with Meriwether *v.* Garrett, Heine *v.* Levee Comm'rs, and other like cases in the Supreme Court of the United States, as to the power to compel the levy of taxes, notwithstanding the repeal of the charter and the prohibition by the legislature to the new officers to levy and collect taxes for the payment of the debts of the dissolved municipality.

Mobile City Case: The City of Mobile being largely in debt, the legislature passed an act *repealing the charter of the city and declaring that the corporation was thereby dissolved and abolished*. The act provided for the appointment by the Governor of three commissioners to take possession of the property and assets of the city, except property held for the public use and governmental purposes, and apply the same under the orders of the Court of Chancery to the payment of the debts of the city, giving preference to the floating debt. On the same day the legislature incorporated the Port of Mobile, which included all the thickly settled and closely built portion of the former City of Mobile; and all of the $16,000,000 of the taxable property of the city but $900,000 was included within the limits of the Port of Mobile, and fourteen-fifteenths of the inhabitants of the City were inhabitants of the Port of Mobile. It limited the powers of the Port of Mobile to the levy of a tax of six-tenths of one per cent, and prohibited its authorities from exercising any other powers. Two questions arose, namely: Whether a preceding creditor was entitled to a judgment against the Port of Mobile on the obligations of the City of Mobile; and second, whether the powers of taxation in existence at the date of the creation of the debt by the City of Mobile could be enforced in favor

§ 171 (115). **Changes not amounting to a Dissolution.** — The *name* of an incorporated place may be changed, its *boundaries*

enlarged or diminished, and its *mode of government altered*, and yet the corporation *not be dissolved, but in law remain the same.*[1]

of the creditor. Both of these propositions were decided in favor of the creditor. The court stated the general proposition involved as follows : —

"We are of opinion, upon this state of the statutes and facts, that the Port of Mobile is the legal successor of the City of Mobile, and liable for its debts. The two corporations were composed of substantially the same community, included within their limits substantially the same taxable property, and were organized for the same general purposes.

"Where the legislature of a State has given a local community, living within designated boundaries, a municipal organization, and by a subsequent act, or series of acts, repeals its charter and dissolves the corporation, and incorporates substantially the same people as a municipal body under a new name for the same general purpose, and the great mass of the taxable property of the old corporation is included within the limits of the new, and the property of the old corporation used for public purposes is transferred without consideration to the new corporation for the same public uses, the latter, notwithstanding a great reduction of its corporate limits, is the successor in law of the former, and liable for its debts ; and if any part of the creditors of the old corporation are left without provision for the payment of their claims, they can enforce satisfaction out of the new."

The court considered this conclusion to be supported by Girard *v.* Philadelphia, 7 Wall. 1 ; Broughton *v.* Pensacola, 93 U S. 266, 270 ; Mount Pleasant *v.* Beckwith, 100 U. S. 514 ; O'Connor *v.* Memphis, 6 Lea (Tenn.), 730 ; and Amy *v.* Selma, 77 Ala. 103.

It held that the remedies in existence for the enforcement of the obligations could not be impaired by subsequent legislation, or if changed, a substantial equivalent must be provided ; that no such equivalent was here provided. The court enforced the contract by which the City of Mobile, in issuing the bonds, agreed to levy a special tax for the payment of the principal and interest, and held that as to the holder of such bonds the obligation to levy such special tax was in force, and rested upon the Port of Mobile, and accordingly directed a peremptory *mandamus* to issue for the satisfaction of the judgment in accordance with the provisions in that behalf in force when the obligation was created. Mobile *v.* Watson, 116 U. S. 289 (1885).

City of Selma Case : In Amy *v.* Selma, 77 Ala. 103, it was held that a new corporation named "Selma," erected to replace one named "City of Selma," which had been dissolved, was its successor, and liable for its debts — as here in an action upon a judgment recovered against its predecessor. See, also, Meyer *v.* Porter, 65 Cal. 67.

Town of Kahoka Case : In Hill *v.* Kahoka, 35 Fed. Rep. 32 (1888), it appeared that the *town* of Kahoka was duly incorporated under the general statute of Missouri, in 1869, and performed various corporate acts, among others issuing certain railroad aid bonds. In 1886, its charter was forfeited for non-user in a proceeding by *quo warranto*, and thereupon the *city* of Kahoka, embracing practically the same territory and population, was incorporated under existing laws as a city of the fourth class. Held, in an action upon the coupons, that the city of Kahoka was liable for the bonds. "Municipal corporations cannot extinguish their debts by changing their names or organizing under new charters. A debt once contracted by a municipal corporation will survive as a debt against whatever corporate entity is subsequently created to take its place and exercise its power of local government over substantially the same people and territory," citing Broughton *v.* Pensacola, 93 U. S. 266 ; Mobile *v.* Watson, 116 U. S. 289 ; Laird *v.* De Soto, 22 Fed. Rep. 421 ; People *v.* Murray, 73 N. Y. 535. *Per Thayer*, J.

City of Brownsville Case : In Devereaux *v.* City of Brownsville, 29 Fed. Rep. 742, the ruling in Mobile *v.* Watson, *supra*, was followed and extended, it being declared not only that the succeeding corporation was liable for the existing debts of its predecessor, but that all the powers of taxation possessed by such predecessor, which had been conferred as a part of the remedy to which its creditors were entitled, survived to the new corporation, and that their exercise could be compelled by *mandamus*. It was also held that statutes which prohibited the exercise of these powers of taxation were void, as impairing the obligation of contracts.

Pensacola City Case : In Broughton *v.* Pensacola (City of), 93 U. S. 266 (1876), an indebted city which had contracted with the creditor to levy a special tax upon real estate within its limits to pay his debt, *surrendered its charter, and the inhabitants residing within the limits of the city organized themselves into a municipal government* under the general incorporation act of the State, in the same way that inhabitants might do who had not been previously incorporated. The creditor filed a bill in equity asking for a decree for the amount of his debt, and that the city be compelled to levy a tax to pay the same. The bill was dismissed by the Circuit Court, and its decree was affirmed by the Supreme Court of the United States. The court held that the new organization, embracing substantially the same corporators and the same territory, although different powers were possessed under the new charter and different officers administered its affairs, was in law to be deemed the successor of the previous corporation and entitled to its rights. Mr. Justice *Field*, delivering the opinion of the court, said : —

"The ancient doctrine, that, upon the repeal of a private corporation, its debts were extinguished, and its real property reverted to its grantors, and its personal property vested in the State, has been so far modified by modern adjudications, that a court of equity will now lay hold of the property of a dissolved corporation, and administer it for the benefit of its creditors and stockholders. The obligation of contracts, made whilst the corporation was in existence, survives its dissolution ; and the contracts may be enforced by a court of equity, so far as to subject for their satisfaction any property possessed by the corporation at the time. In the view of equity, its property constitutes a trust fund pledged to the payment of the debts of creditors and stockholders ; and, if a municipal corporation, upon the surrender or extinction in other ways of its charter, is possessed of any property [not of a public nature, see Meriwether *v.* Garrett, *supra*], a court of equity will equally take possession of it for the benefit of the creditors of the corporation. In this case, it is averred in the bill that the city of Pensacola, upon the surrender of its original charter, did not possess any property. It is not necessary, however, in the view we take of the proceedings for the reorganization of the city government, to consider the effect of an absolute repeal of the charter of a municipal corporation upon its obligations. It is sufficient that here, in our judgment, there was a continuation of the corporation of Pensacola, with its original rights of property and obligations, not a new and distinct creation or corporate capacity and liability."

Case of Mount Pleasant v. Beckwith : Here an indebted municipal or public corporation was *legislated out of existence, and its territory was annexed to similar corporations.* In the absence of legislative provision otherwise, it was held that the latter corporations became entitled to all the property of the abrogated corporation, and severally liable for a proportionate share of its then subsisting legal debts, and that they were vested with the power to raise revenue with which to pay such

[1] *Ante*, sec. 85, and cases cited ; *post*, chap. viii. secs. 176, 177 ; and see *ante*, chap. iv., where the extent of the legislative authority over municipal corporations is considered. Girard *v.* Philadelphia, 7 Wall. 1 (1868), noted fully, *infra*, sec. 172, note. Broughton *v.* Pensacola, 93 U. S. 266 (1876) : and see notes to sec. 170, *supra*, and cases there cited.

§ 172. **Same subject.** — Accordingly, the *substitution of a new municipal charter* in the place of a previous charter, or a change in

such a charter in whole or in part, where substantially the same territory and the same inhabitants are concerned, will not be presumed, or be held to be the creation of a new corporation, but the

debts by levying taxes upon the property thus annexed and the persons residing thereon; and a bill in equity by the creditors of the extinguished corporation against the corporations thus succeeding to its property and powers was sustained to the extent that the amount of the debt was ascertained, and the sum apportioned among the corporations to which the territory of the indebted corporation had been annexed, and a decree rendered for the amounts thus apportioned to be collected in the manner provided by law. Mount Pleasant *v.* Beckwith, 100 U. S. 514 (1879). There is no intimation in later decisions of the Supreme Court that they are, in any respect, inconsistent with this judgment. See Meriwether *v.* Garrett, 102 U. S. 472; Barkley *v.* Levee Commissioners, 93 U. S. 258; Broughton *v.* Pensacola, 93 U. S. 266; Thompson *v.* Allen County, 115 U. S. 550; Amy *v.* Watertown, 130 U. S. 301 (1888). The actual judgments in all these cases may not be in conflict with each other, but it seems difficult to the author to reconcile all of the reasoning by which the different judgments are supported. See, also, Beckwith *v.* Racine, 7 Biss. 142 (1876), *Drummond* and *Dyer*, JJ. The point decided may be briefly stated thus: Where a municipality owing railroad aid bonds, which it was provided by statute should be paid by an annual tax upon the property within it, was legislated out of existence, and the territory was included in three other municipalities without any provision being made in respect to the payment of the bonds, it was held that the legislature had the power to make these changes, but that the obligations of the contract and the power of taxation still remained. It was further held that in consequence of these changes the creditor could not sue at law, as service of process on the old corporation could not be made, but that equity would give the creditor a remedy by requiring the existing corporations, within whose boundaries the property included in the old is situate, to levy the necessary taxes to pay the debt in proportion to the amount of territory each obtained. See Mount Pleasant *v.* Beckwith, *supra; post*, sec. 186.

In Nelson *v.* Newark & Belleville, 49 N. J. L. 246, where by statute, the *territory of a township had been divided* between a city and another township, with a direction that its debts should be paid proportionately by the city and the township acquiring its territory, it was held that the duty of paying the debts was imposed upon them, and that the creditors could enforce the duty by suit against them directly. See also Canova *v.* Commissioners, 18 Fla. 512; case of Elizabeth City N. J. *Post*, chap. xix. sec. 760 *a*.

In the case of the town of Port Gibson *v.* Moore, 13 Sm. & Marsh. (21 Miss.) 157 (1849), it was held, indeed, that the repeal of the charter of an indebted municipal corporation dissolved it; that *such dissolution extinguished debts to and from the corporation*, and that a subsequent act re-incorporating the place did not make it liable for a debt existing anterior to the act repealing its charter. The court overlooked the constitutional provision protecting contracts, and the case as to the effect of a dissolution upon the rights of creditors seems to conflict with those above cited. *Contra*, Broadway Railway Case, decided by the Court of Appeals of New York; People *v.* O'Brien, 111 N. Y. 1 (1888), and see cases cited in this note. See further, as to extinguishment of debts by dissolution of corporation, Mallory *v.* Mallett, 6 Jones Eq. 345; Hopkins *v.* Whitesides, 1 Head (Tenn.), 31; Bank *v.* Lockwood, 2 Harring. (Del.) 8; Robinson *v.* Lane, 19 Ga. 337; Muscatine Turnverein *v.* Funck, 18 Iowa, 469; Owen *v.* Smith, 31 Barb. 641; Welch *v.* Ste. Genevieve, 1 Dillon C. C. 130; Thompson *v.* Abbott, 61 Mo. 176 (1875); *post*, chap. xiv.; Louisville Bridge Co. *v.* Louisville, 81 Ky. 189; St. Louis Bridge Co. *v.* East St. Louis, 121 Ill. 238; State, *ex rel.* Bridge Co. *v.* Columbia, 27 S. C. 137; *post*, sec. 786; Brooklyn *v.* Smith, 104 Ill. 429.

assumption by the old one of new powers and privileges.[1] And where the rights of creditors are involved, the presumption is extremely strong that the identity of the corporation continues, notwithstanding different powers are possessed by the new organization, and different officers administer its affairs.[2]

[1] State *v.* Natal, 39 La. An. 439, where it was said, "The city of New Orleans founded by Bienville about 1718 has never ceased to exist as an agglomeration of human beings for social, commercial, and industrial purposes. . . . In 1805 those inhabitants were given a charter, for the first time since the cession of 1803, and that charter has been altered and amended some way or other, in subsequent years, viz.: 1812, 1818, 1833, 1835, 1837, 1846, 1850, 1852, 1870, and 1882; but the city, the existence of which was generally recognized by the various Constitutions, has retained its identity, not only as a matter of fact, but also as a matter of legal necessity." See *supra*, sec. 170, and cases in note.

Mr. Girard's will of 1831 gave the residuum of his estate *by its corporate name* to the old city of Philadelphia in trust for certain objects, the primary one being the college, and the secondary ones "to enable the city to improve its police, to improve the city property and the appearance of the city itself, and to diminish taxation." The old city accepted the trust. By 1854 twenty-eight distinct suburban municipalities had grown up around the old city, and by an act of that year all of their charters and that of the old city itself were abolished, and their rights of property transferred to the new consolidated corporation of the city of Philadelphia, which instead of being two miles square has about one hundred and twenty-nine square miles. The heirs of Mr. Girard claimed that the annihilation of the old city and its merger into the immense consolidated corporation defeated the object of the testator. But the court held that "the identity of the corporation was not destroyed, and that the change in its name, the enlargement of its area, &c., did not affect its title to property held at the time of such change, or its capacity to execute the trusts of the will." Girard *v.* Philadelphia, 7 Wall. 1 (1868). The essential point in this case is that it establishes notwithstanding the change of charter the continuous legal identity of the new city corporation with the old.

[2] Broughton *v.* Pensacola, 93 U. S. 266 (1876); approving Milner's Admx. *v.* Pensacola, 2 Woods, 632; Walnut Township *v.* Jordan, 38 Kan. 562; *ante*, sec. 85, and cases cited, sec. 170, note; *post*, secs. 173, 176, 177.

In delivering the judgment of the court in Broughton *v.* Pensacola, Mr. Justice *Field* observes: —

"Although a municipal corporation, so far as it is invested with subordinate legislative powers for local purposes, is a mere instrumentality of the State for the convenient administration of government; yet, when authorized to take stock in a railroad company, and issue its obligations in payment of the stock, it is to that extent to be deemed a private corporation, and its obligations are secured by all the guaranties which protect the engagements of private individuals. The inhibition of the Constitution, which preserves against the interference of a State the sacredness of contracts, applies to the liabilities of municipal corporations created by its permission; and although the repeal or modification of the charter of a corporation of that kind is not within the inhibition, yet it will not be admitted, where its legislation is susceptible of another construction, that the State has in this way sanctioned an evasion of or escape from liabilities the creation of which it authorized. When, therefore, *a new form is given to an old municipal corporation*, or such a corporation is reorganized under a new charter, taking in its new organization the place of the old one, embracing substantially the same corporators and the same territory, it will be presumed that the legislature intended a continued existence of the same corporation, although different powers are possessed under the new charter, and different officers administer its affairs; and in the absence of express provision for

§ 173. **Same subject.** — The case contemplated in the preceding sections, in which the *continuous legal existence and identity of a municipality will be held to exist*, where substantially the same inhabitants and the same territory are concerned, notwithstanding a change in boundaries and form of organization has taken place, is one of quite common occurrence and of easy solution. But suppose the legislature absolutely *repeals* the charter or constituent act of an indebted municipality, and makes no provision for the payment of its debts, or, instead of an absolute repeal, it makes such *changes* as do not relate substantially to the same inhabitants and the same territory, as for example supersedes or dissolves the indebted municipality, and annexes what constituted its territory and people to other municipalities, and makes no provision for its debts or their mode of payment. Is the creditor remediless except by an appeal to the legislature? This is a difficult inquiry, and we have endeavored to answer it in the preceding sections and in the cases referred to in the notes, as far as it has been possible to do so in the existing state of the adjudications of the Supreme Court of the United States, whose determination of such questions is final and authoritative.

The author ventures the suggestion that the true solution of the many difficulties may possibly be found in the consideration that the power of a municipality to levy taxes to pay its debts as the power existed at the time when the debts were created, is in its essence not the grant of a power to the incorporated body, but to the inhabitants of the incorporated territory.[1] In this view the power or the contract obligation and duty of its exercise survives the repeal of the charter and the dissolution of the old corporation, and passes, equally with the obligation to pay the debt, to the inhabitants who continue to reside, under any form of organization, within the municipal area in behalf of which the debt was created; the exercise of which power and consequent duty may be compelled by the judicial process of mandamus whenever there are officers in existence who, under the general legislation of the State, have the power to levy and collect taxes.

their payment otherwise, it will also be presumed in such case that the legislature intended that the liabilities as well as the rights of property of the corporation in its old form should accompany the corporation in its reorganization." See and compare Barkley *v.* Levee Comm'rs, 93 U. S. 258, where a levee district — a *quasi* public corporation — was superseded in its functions by a law dividing the district, and creating a new corporation for one portion and placing the other under the charge of the local authorities, and where under the circumstances a judgment creditor was held to be without legal remedy. See also cases of the city of *Memphis*, city of *Mobile*, and city of *Brownsville*, *ante*, sec. 170, note.

[1] *Ante*, secs. 3 *a*, 170–172, and cases as to the nature of incorporated municipalities.

It is usual, however, for the legislature, on the change or division of municipal and public corporations, to make provision concerning existing indebtedness; and its power to do so, unless restrained by special constitutional provision, is clear and ample.[1]

§ 174 (116). **Revival by new Charter and its Effect.** — It is the doctrine of the English courts that where the *functions of an old corporation are suspended*, or where the corporation, by loss of all its members, or of an integral part, is dissolved as to certain purposes, *it may be revived by a new charter*, and the rights of the old corporation be granted over to the same, or a new set of corporators, who in such case take all the rights and are subject to all the liabilities of the old corporation, of which it is but a continuation.[2]

[1] *Ante*, chap. iv.; *post*, secs. 185, 187, 188, 189; *ante*, sec. 170 and notes, 172, 173. When two municipal corporations (St. Anthony and Old Minneapolis) were merged, by legislative act, into a new corporation, it was held that the new corporation, by *force of provisions in the act*, was liable for a tort, for which one of the constituent corporations would have been responsible if the merger had not taken place. Adams *v.* Minneapolis, 20 Minn. 484 (1874).

[2] Rex *v.* Passmore, 3 Term R. 119, 247; Regina *v.* Bewdley, 1 P. Wms. 207; Colchester *v.* Brooke, 7 Queen's Bench, 383; Colchester *v.* Seaber, 3 Burr. 1866; Grant on Corporations, 304 and note; 2 Kyd, 516. Whether a statute or legislative charter will operate to revive or continue an old, or to create a new and distinct corporation, depends upon the intention of the legislature. *Ante*, chap. v.; Bellows *v.* Bank, &c., 2 Mason C. C. 43, *per Story*, J.; Angell & Ames, sec. 780; Grant on Corporations, 304, 305; Hoffman *v.* Van Nostrand, 42 Barb. 174; Girard *v.* Philadelphia, 7 Wall. 1; Olney *v.* Harvey, 50 Ill. 453 (1869); *supra*, secs. 170, 171, 172, 173; *post*, secs. 176, 177; Neely *v.* Yorkville, 10 S. C. 141. Approving text, as to whom the revenue is to be paid on the dissolution of a corporation in New Jersey. See Heckel *v.* Sandford, 40 N. J. L. 180. The late civil war did not suspend the right to the exercise of the franchises of an incorporated town within the lines of the insurrectionary forces, and it might still make valid contracts, notwithstanding it was under the control of the insurgent power. Selma *v.* Mullen, 46 Ala. 411 (1871).