that in this respect it falls short of due process, more than the provisions of state workmen's compensation laws for establishing the amount of compensation by a commission, *New York Central R. Co.* v. *White,* 243 U. S. 188, 207–208; *Mountain Timber Co.* v. *Washington,* 243 U. S. 219, 235; or the appraisal by a commissioner of the value of property taken or destroyed by the public, made controlling by condemnation statutes, *Dohany* v. *Rogers,* 281 U. S. 362, 369; *Long Island Water Supply Co.* v. *Brooklyn,* 166 U. S. 685, 695; *Crane* v. *Hahlo, supra,* p. 147; or findings of fact by boards or commissions which, by various statutes, are made conclusive upon the courts if supported by evidence, *Tagg Bros. & Moorhead* v. *United States,* 280 U. S. 420; *Interstate Commerce Comm.* v. *Union Pacific R. Co.,* 222 U. S. 541; *Virginian Ry. Co.* v. *United States,* 272 U. S. 658, 663; *Silberschein* v. *United States,* 266 U. S. 221; *Ma-King Products Co.* v. *Blair,* 271 U. S. 479.

Affirmed.

PHILLIPS, COLLECTOR OF INTERNAL REVENUE, *v.* DIME TRUST & SAFE DEPOSIT CO., EXECUTOR.

CERTIFICATE FROM THE CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

No. 18. Argued October 20, 1931.—Decided November 23, 1931.

1. The tax imposed under § 302 of the Revenue Act of 1924, determined by including in the gross estate of the decedent subject to tax property held by the decedent and spouse as tenants by the entirety, and bank deposits in their joint names, is not a direct tax in violation of the constitutional requirement of apportionment (Art. I, § 2, cl. 3, and § 9, cl. 4). Following *Tyler* v. *United States,* 281 U. S. 497. P. 165.
2. As to property held upon tenancies by the entirety created after the effective date of the 1924 Act, the validity of the tax is conceded. *Tyler* v. *United States,* 281 U. S. 497. *Id.*

3. As to property held upon tenancies by the entirety created before the effective date of the 1924 Act, but after that of the 1916 Act, and as to joint bank accounts the balances in which at the time of the death are not shown to have been derived from deposits made before the date of the 1916 Act, although the accounts were opened earlier,—the tax is not arbitrarily retroactive. *Milliken* v. *United States*, 283 U. S. 15. P. 166.
4. In a suit to recover taxes already paid, the presumption is that they were lawfully assessed, and the burden rests upon the taxpayer to prove the facts that establish their illegality. P. 167.

CERTIFICATE from the Circuit Court of Appeals, upon appeal from a judgment of the District Court, involving questions as to the validity of the federal estate tax as applied to property held by a decedent and spouse as tenants by the entirety. This Court ordered up the entire record.

Mr. Claude R. Branch, with whom *Solicitor General Thacher, Assistant Attorney General Youngquist* and *Messrs. Sewall Key, J. Louis Monarch, Erwin N. Griswold, Clarence M. Charest,* and *Wm. T. Sabine, Jr.,* were on the brief, for Phillips.

Mr. Charles C. Lark for the Dime Trust & Safe Deposit Co.

An estate by entirety in Pennsylvania takes effect from its inception. It cannot be affected by the actions of either spouse, and is not subject to the debts of either. *Sloan's Estate,* 254 Pa. 346. *Leach's Estate,* 282 Pa. 545.

Paragraphs (a) and (e) of § 302 of the Revenue Act of 1924 must be read and construed together.

The property rights of the parties having become fixed at the inception of the estate by reason of the original instrument creating it, and that act having been fully consummated before the taxing statute was passed, there was no retreat open to decedent. He was not able to change it without the consent of his co-tenant.

At the time of the creation of these estates there was no law taxing an estate by the entirety upon the death of one of the spouses. The *Tyler* case is the first decision of this Court holding that an estate of that kind can be taxed under any Act of Congress.

The decisions of the Board of Tax Appeals and of the courts before which the question arose prior to that decision all held that an estate by entirety could not be taxed under any of the Acts of Congress. *Blount* v. *United States,* 59 Ct. Cls. 328; Dyer, Executor, 5 B. T. A. 711; Murphy, Executor, 5 B. T. A. 952; Smith, Executor, v. Commissioner, 6 B. T. A. 341; *United States* v. *Provident Trust Co.,* 35 F. (2d) 339; *Lynch* v. *Congdon,* 1 F. (2d) 133.

The estates referred to in Group 2 were fully created before the taking effect of the Act of 1924 under which the tax is here claimed.

Reviewing: *Blodgett* v. *Holden,* 275 U. S. 142; *Nichols* v. *Coolidge,* 274 U. S. 531; *Untermyer* v. *Anderson,* 276 U. S. 440; *Lewellyn* v. *Frick,* 268 U. S. 238.

This Court has consistently placed its stamp of disapproval on retroactive construction of taxing statutes in cases where another construction was open. *Shwab v. Doyle,* 258 U. S. 529; *Lewellyn* v. *Frick,* 268 U. S. 238; *Levy* v. *Wardell,* 258 U. S. 542; *Knox* v. *McElligott,* 258 U. S. 546; *Union Trust Co.* v. *Wardell,* 258 U. S. 537; *Coolidge* v. *Long,* 282 U. S. 582.

Milliken v. *United States,* 283 U. S. 15, was decided upon the ground that the gift was made in contemplation of death, and this Court says, "That is controlling here, since it is not challenged by any facts appearing of record." See further: *Sturges* v. *Carter,* 114 U. S. 511; *Re Pell,* 171 N. Y. 48; *National Bank* v. *Jones,* 12 L. R. A. (N. S.) 310, 314; *Crump* v. *Guyer,* 2 A. L. R. 331; 6 R. C. L., p. 304.

Distinguishing: *Chase Nat. Bank* v. *United States,* 278 U. S. 327; *Reinecke* v. *Northern Trust Co.,* 278 U. S. 339; *Saltonstall* v. *Saltonstall,* 276 U. S. 260, upon the ground that a tenancy by the entirety involves property rights which are beyond recall. *Knox* v. *McElligott,* 258 U. S. 546; *In re Lyons Estate,* 233 N. Y. 208; *In re McKelways Estate,* 221 N. Y. 15; *In re Carnegie Estate,* 203 App. Div. 91.

The saving and checking accounts in bank were opened in 1910, and in that sense acquired at that time.

The Acts of 1916, 1918, and 1921, were repealed without any saving clauses. The repeals were absolute. The general rule is that where a statute is repealed without a reënactment of the repealed law in substantially the same terms, and there is no saving clause or a general statute remitting the effect of the repeal, the repealed statute in regard to its operative effect is considered as if it had never existed except as to matters and transactions passed and closed, 25 R. C. L. 932, and there can be no vested right in any law which precludes its change or repeal. *Id.* 910; Endlich on Statutes, § 478; *Yeaton* v. *United States,* 5 Cranch 281; *Hamilton Bank* v. *Dudley,* 2 Pet. 492.

The Government acquired no vested rights whatever in the Acts of 1916, 1918, and 1921. The Act of 1916 is not retroactive. Those Acts were repealed absolutely and the provisions thereof stricken from the statutes. The provisions of those Acts could not be invoked except as to transactions passed and closed at the dates of their repeal. *Knox* v. *McElligott,* 258 U. S. 546. None of the prior Acts, as shown above, were retroactive. *Nichols* v. *Coolidge,* 274 U. S. 531. The Act of 1924 is the first Act which attempts to legislate retroactively. In so far as it attempts to do this, it is unconstitutional and void in that it is capricious and confiscates the property of the surviving spouse.

MR. JUSTICE STONE delivered the opinion of the Court.

This suit was brought in the District Court for the Middle District of Pennsylvania, by the executor, to recover federal estate taxes alleged to have been illegally exacted. A jury having been waived, the court found the facts as stipulated and gave judgment against the collector. 30 F. (2d) 395. Upon appeal, the Court of Appeals for the Third Circuit, without deciding the case, certified here the questions involved, and, on joint motion of the parties, this Court ordered up the entire record. Jud. Code 239.

The only controversy presented relates to taxes levied and collected with respect to thirteen items of property, real and personal, concededly held by decedent and his wife as tenants by the entirety at his death in 1925. The applicable taxing statute is § 302 of the Revenue Act of 1924, 43 Stat. 253, 304, which provides that the gross value of the decedent's estate subject to tax shall include all property:

" (e) To the extent of the interest therein held as joint tenants by the decedent and any other person, or as tenants by the entirety by the decedent and spouse, or deposited, with any person carrying on the banking business, in their joint names and payable to either or the survivor, except such part thereof as may be shown to have originally belonged to such other person and never to have been received or acquired by the latter from the decedent for less than a fair consideration in money or money's worth: . . ."

This provision, without any variation of present significance, was in force under the 1916 and successive revenue acts. § 202, Rev. Act of 1916, 39 Stat. 756, 777-778; Rev. Act of March 3, 1917, 39 Stat. 1000; § 402, Rev. Act of 1918, 40 Stat. 1057, 1097; § 402, Rev. Act of 1921, 42 Stat. 227, 278.

The thirteen items of property with respect to which the tax was imposed may be classified in three groups, (1) property held upon tenancies by the entirety created after the effective date of the Revenue Act of 1924, (2) property held upon tenancies by the entirety created after the Revenue Act of 1916 and before the effective date of the Revenue Act of 1924, and (3) bank accounts opened in 1910 in the joint names of decedent and his wife, in which there were deposit balances at the date of his death.

The district court accepted the contention of the taxpayer that the nature of the estate by the entirety, and particularly the interest in it of a surviving tenant, are such as to preclude the imposition of death or transfer taxes measured by the value of the interest which ceases at the death of either tenant, and that the tax, if deemed to be upon property, is a direct tax not apportioned, forbidden by Art. I, § 2, Clause 3, and § 9, Clause 4, of the Constitution. After the decision of the district court, this contention was considered and rejected by this Court in *Tyler* v. *United States,* 281 U. S. 497, holding that a like tax imposed under § 202 (c), Rev. Act of 1916, was a valid indirect tax, measured by the value of the property, rights in which devolved upon the surviving tenant upon the happening of an event, the death of the other tenant by the entirety.

The controlling force of that decision is acknowledged as to the items of property in Group (1), acquired after the passage of the taxing act, and as to them it is conceded that the tax was rightly levied.

But it is urged that the tax imposed with respect to Groups (2) and (3) is invalid. As the creation of the tenancies by the entirety antedated the taxing act, and the earlier corresponding sections had been repealed, it is insisted that the statute is given a retroactive operation, such as that condemned by this Court in *Nichols* v. *Cool-*

idge, 274 U. S. 531; *Untermyer* v. *Anderson,* 276 U. S. 440; *Coolidge* v. *Long,* 282 U. S. 582. As § 302 (h) of the Act of 1924 specifically makes the quoted provision of subdivision (e) applicable to estates created or existing before the passage of the statute, the question presented is not one of its construction or applicability, but of the power of Congress to impose the tax. The Government argues that the tax was laid on the devolution of rights upon the wife at the death of her husband after the passage of the Act, and that therefore the statute was not applied retroactively, even though the estate was created before its enactment. Without foreclosing consideration of this contention at another time, we find it unnecessary now, in view of the facts of the present case, to pass upon it.

Group 2. The tenancies in all of the items of the second group were created after the passage of the 1916 Revenue Act. Congress had by that act adopted a system of death taxes, embracing, as it lawfully might, estates by the entirety. As was pointed out in *Tyler* v. *United States, supra,* pp. 503, 505, such estates are appropriate subjects of death taxes and the taxation of them is a suitable measure to prevent evasion of a system of taxation levied on estates passing at death by will or inheritance. In both respects they resemble gifts made in contemplation of death, likewise taxed by the estate tax provisions of the 1916 and later revenue acts. The considerations which led us, in *Milliken* v. *United States,* 283 U. S. 15, to uphold taxation of gifts in contemplation of death, made after the 1916 Act and before that of 1918, at the higher rate of the latter act, are equally applicable here. The knowledge available before the creation of the estate that it was embraced within an established taxing system and that its taxation, on the same basis and in the same manner as decedents' estates, was an essential part of the

system to prevent evasions, relieves the present tax of the objection that it is arbitrarily retroactive.

Group 3. Although the bank accounts were opened before the passage of the Revenue Act of 1916, the record does not disclose whether the deposits, which were the sources of the credit balances at the time of the decedent's death, were made before or after 1916. If after, the tax was rightly laid, for reasons already stated, which support the tax with respect to the items in Group 2. As the suit is brought to recover taxes already paid, the presumption is that they were lawfully assessed and the burden rests on the taxpayer to prove the facts which establish their illegality. *Niles Bement Pond Co.* v. *United States,* 281 U. S. 357, 361; *Reinecke* v. *Spalding,* 280 U. S. 227, 232. As the taxpayer has failed to sustain the burden in this respect or to show that the wife had originally owned or paid for any of the items or to present any facts to support a recovery other than those stated, the judgment is

Reversed.

UNITED STATES *v.* RYAN.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

No. 49. Argued October 26, 27, 1931.—Decided November 23, 1931.

1. Statutes designed to prevent fraud on the revenue are construed less narrowly, even though a forfeiture results, than penal statutes and others involving forfeitures. P. 172.
2. In R. S. § 3453, which provides for forfeiture of (1) taxable articles found in the possession, custody or control of any person for the purpose of being sold or removed by him in fraud of the internal revenue laws, (2) raw materials found in the possession of any person intending to manufacture the same into articles of a kind subject to tax, with intent to defraud the revenue, and (3) all tools, implements, instruments, and personal property whatsoever, in the