Township Government in Illinois

...BY...

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INTRODUCTION.

The word "town" is the Icelandic tun, Anglo-Saxon tun, German zaun, and seems originally to have meant a hedge, then a hedged or fenced plot or enclosure. In Scotland it still denotes the farm house and buildings; in Iceland, the manured grass plot, enclosed within a low green bank or raised dyke, which surrounds the baer or farm house. In parts of eastern England, the chief cluster of houses in a parish is still often called the "town". In the north of England, where the parishes are more often larger than they are in the south, the civil divisions of a parish are called townships.

Township organization is of recent date, and no scheme having much similarity to it can be found in ancient history. The municipal divisions of Athens and the other ancient republics were rather into castes or social ranks, than territorial; although the "demes" of ancient Athens, the Roman and Grecian colonies, and at a later date the free cities of Mediaeval Europe possessed more or less of the privileges of a municipal corporation, such as choice of voters, election of officers, possession of a seal, management of funds, and the like. These cases, however, are exceptions; isolated instances of the universal instinct of self government which is born with all men, but repressed under non-elective and irresponsible government.

1. Prior to the Township Organization Act, the word "town" was used to designate an incorporated town, in this State.
King Alfred, about A. D. 871, instituted a territorial division, which probably contains the first germ of our American idea of a township. This was a division of the kingdom into "tithings", an Anglo-Saxon term equivalent to "tennings", or groups of ten. Each tithing was the area inhabited by ten contiguous families, who were "frankpledges", i. e., free pledges or sureties, to the king for each other's good behavior, and were bound to have any offender within their district forthcoming. One of the principal inhabitants of the tithing was annually appointed to preside over it, entitled tithing-man, or headborough, being supposed the most discreet man within it.

As ten families constituted a tithing, so ten tithings formed a hundred, governed by a high constable or bailiff; and an indefinite number of hundreds composed a shire.

Tithings, towns or vills, were in law of the same signification. The word town or vill has, it seems, by the alteration of times and languages, now become in England a generical term, comprehending under it the several species of cities, boroughs and common towns. A city, says Blackstone, is a town incorporated, which is or hath been the seat of a bishop. A borough is understood to be a town either corporate or not, that sendeth burgesses to parliament.

The inhabitants of these tithings, towns or vills in England, possessed but few powers or privileges; on the contrary all their officers were appointed from without, and they had no voice in

1. Davidson & Stuve, 556.
2. 1 Bl. Com., II7.
their local concerns.

Before the reign of Edward I., there were all kinds of townships beginning with the mere rural township, and ending with the great community of London. Examining the "liberties" and "franchises" bestowed by the charters of the twelfth and thirteenth centuries, we can determine the corporate character of the typical borough. It had its moot, held by the sheriff, except in some boroughs which had been Danish, where there seems to have been a group of hereditary law-men or doomsmen. It is possible also that the military organization of the borough had caused the formation of wards (custodiae) at the head of each of which stands an alder-man, whose office like every office is apt to pass to his son. But the little evidence that we have, suggests that a close and definite college of doomsmen was exceptional, and we have small warrant for supposing the existence of any legally constituted patriciate.

Oftentimes one of the liberties granted in the charter was that their court should not be held too often—not more frequently than once a week. Henry I. had allowed the Londoners to elect their sheriff and Judiciar; many towns, London included, bought their right to have an elected mayor; the bailiffs were also elected in some of the greater boroughs, although before they entered into their offices they had to be approved by the king's Justiciar. Beyond conceding these slight liberties, the charters of this age

I. Stubb's Select Charters, 107.
seldom define any constitution for the borough. The active organ of the borough was a court rather than a council. In 1200, John granted to the men of Ipswich a charter providing for twelve chief portmen ('as there are in the other free boroughs of England'), who maintain the borough and render the judgments of the town. At a little later time we find that the twelve chief-portmen hold their offices for life, though they might be removed for misbehaviour, by the judgment of their fellows. Vacancies were filled by cooption. This body was first rather a judicial than a governing body, for the powers entrusted to the burgesses by their charter were much rather judiciary than governmental. But as municipal life grew intenser and more complex; the court had to ordain and to tax as well as to judge, and it was apt to become a council; the governing body of the borough. Then trial by jury came, the court and the council were slowly differentiated. This, except in London and a few other towns, happened in the fourteenth century. The power of acting in the name of the borough passed little by little from a general assembly of burgesses to a council or select body; but even until 1835 there were towns with long histories in which all the most important business of the corporation had to be

I. Pollock & Maitland, Eng. Law, 658 (Gross, Gild Merchant, II, 115)
2. Ipswich Domesday, I67.
brought before a meeting in which every corporator, every Burgess or freeman had a vote. Such as the case at Winchester, Maidstone, Cambridge, Ipswich. The charters do not expressly grant any power of legislation but no doubt such power was often exercised. Definite legislation begins in London at an early date; the earliest English Building Act was issued in 1189.

We now come to consider the first rise of the town organization in America. The system, as at present existing in the northern and eastern states, originated in New England, and is an evidence of the confidence which the early patriots of those colonies entertained in the ability of the people to govern themselves. It appears, as far as the records show, to have been substantially a result of the experience of practical inconveniences, which the puritans took such pains to remedy as were suggested to them by their home recollections, but with whatever modifications their remarkably direct and practical common sense suggested. The New England colonies were at first governed by a general court, or legislature, composed of a governor and a small council. The court consisted of the most influential inhabitants, and possessed and exercised both legislative and judicial powers, which were limited only by the wisdom of the holders. They made laws, ordered their execution by officers, tried and decided civil and criminal cases, enacted all manner of municipal regulations, and in fact did

I. Munic. Corp. Rep. 1835, II, 899; 760; IV, 2188; 2306.
2. Pollock & Maitland, Eng. Law, 637 et seq.
all the public business of the colony.
The first general enactment to establish towns, that of the General Court of Massachusetts, of March 1635, so far as it indicates any motive, implies convenience only as the reason of the law. It provides that whereas "particular towns have many things that concern only themselves, and the ordering of their own affairs, and disposing of business in their own town" therefore "the freemen of every town, or the major part of them, shall only have power to dispose of their own lands and woods, and all the appurtenances of said towns, to grant lots, and make such orders as may concern the well ordering of their own towns, not repugnant to the laws and orders established by the general court." They might also impose fines of not more than twenty shillings, and "choose their own particular officers, as constables, surveyors for the highways, and the like" Evidently this enactment relieved the general court of a mass of municipal details, without any danger to the powers of that body in controlling general measures of public policy.
probably also a demand from the freemen of the town was felt, for the control of their own home concerns.

Similar provisions for the corporation of towns were made in the first constitution of Connecticut, adopted in 1639; and the plan of township organization, as experience proved its remarkable economy, efficacy and adaptation to the requirements of a free and intelligent people, became universal throughout New England, and

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went westward with the emigrants from New England, into New York, Ohio and other western states, including the northern parts of Illinois.

But a different policy determined the character of the institutions of the southern part of our state. This was the "County System", which originated with Virginia, whose early settlers soon became large landed proprietors, aristocratic in feeling, living apart in almost baronial magnificence on their own estates, and owning the laboring part of the population. Thus the material for a town was not at hand, the voters being thinly distributed over a large area. The county organization, where a few influential men managed the whole business of the community, was consonant with their recollections or traditions of the judicial and social dignities of the landed aristocracy of England.

This system was spread from Virginia where eight counties were organized in 1634, to all the southern states, and some of the northern states, unless we except the nearly similar division into "districts" in South Carolina, and that into "parishes" retained by Louisiana from the French laws. Illinois which became a county of Virginia, on its conquest by General George Rogers Clark, retained the county organization, which was formally extended over the state by the constitution of 1818. Under this system as in other states adopting it, most local business was transacted by

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2. Schedule Section 4.
three commissioners in each county, who constituted a county court, with quarterly sessions. During the period ending with the constitutional convention of 1847, a large portion of the state had become filled up with a population of New England birth or character, daily growing more and more compact and dissatisfied with the county system. Under the influence of this feeling, the constitutional provision of 1848, and subsequent law of 1849 were enacted, permitting counties to adopt a township organization.

I. Haines, Township Laws, x.
CHAPTER I.

DEVELOPMENT TO 1848.

For several years after the final ratification of the Federal compact, nothing was effectually done by Congress or the states in reference to the western lands. At length terms of compromise were arranged between Virginia and the Federal Government, and Virginia authorized her delegates to make a deed of cession of her outlying territory agreeable to the terms therein prescribed. This authority was soon afterwards executed, and the cession of Virginia, upon the conditions sanctioned by the report of the committee, was accepted by Congress. Massachusetts followed the lead of Virginia, and in April 1785, ceded to the United States all her claims to territory west of the western boundary of New York. This cession was based upon the pledge given by Congress in October 1780. The last sacrifice of state pretentions to the common good was made by Connecticut. In September 1786, her authorized delegates ceded all the land, within her chartered limits, lying one hundred and twenty miles west of the western boundary of Pennsylvania, to the common use and benefit of the United States, Connecticut included.

After the cession of western land by the states to the govern-

3. Land Laws, United States, 102.
ment, two aspects of the duty of disposing of it confronted them; first, the governmental, and second, the commercial, considering its value as property to be disposed of for the common good. It was the occasion for maturing and applying upon the vast interior a system of land surveys, locations and entries, securing perfect titles with least possible expense, such as had never before been attempted on such a magnificent scale. In dividing and maturing this scheme, the preconceived ideas and practises prevailing in New England, on the one hand, and in the southern states on the other, came into close contact. The southern plan of entering and acquiring title to public lands favored acquisition of large and choice tracts of land by those only who could bear the expense of surveys. It was also attended by great confusion of titles, as each purchaser, on paying a trifle (two cents per acre) could locate his warrant on any land not already surveyed. This resulted in lapping and over-lapping, the only lines being those run by each individual proprietor. By the New England plan the lines were run and established by government authority, and titles came from grants made each one of which was defined by metes and bounds, marked out by surveyors, who acted for the government under oath. Not only the rights of separate ownership were thus protected, but the civil, religious, and educational wants of the population were carefully guarded and accommodated. The following from the History of Hardwicke, is an illustration of the New England plan:

"June 17, 1732, the general court of Massachusetts granted six
miles square for a township, to be laid out in a regular form, by
a surveyor and chainmen under oath. The said lands by the to be
settled on the following conditions: that they within the space
of five years settle, and have on the spot, sixty families (the
settlers to be none but natives of New England); each settler to
build a good and convenient dwelling house of one story high, eigh-
teen feet square at least; and clear and bring to, four acres fit
for improvement, and three acres more well stocked with English
grass; and also lay out three shares in the town (each share to
be 1/63 of the town), one share for the first settled minister,
one for the ministry, one for the school; and also build a conven-
ient meeting house, and settle a learned and orthodox minister
within the time aforesaid." This was for a company of sixty
neighbors, who proposed to settle a new tract of country together.
"On February 21, 1732, they voted unanimously that the remaining
lands belonging to the partners be lotted out by a committee, in
such quantities that each proprietor have three lots, and so sort-
ed as that in the draft each may have a just and equal share."

This example gives the drift of the New England idea; that
the soil should pass into the hands of its future cultivator with
perfect title, and so that "each person may have a just and equal
share." In this way these little republics-townships of conven-
ient size were originated, placing the civil and political power
in the hands of those who own the country, at the same time mak-
ing some provision for moral and educational wants.

I. History of Hardwicke, 23 (Manasseh Cutler, I, 124.)
So far as retaining control until definite boundaries were
marked out on visible objects, and disposing of titles only in ac-
cordance with governmental surveys, the New England plan seems to
have been adopted very early by Congress, but it required long dis-
cussions and efforts to agree upon details. On May 31, 1779,
the delegates from the state of Maryland received instructions,
that were entered upon the journal of Congress, claiming that the
unsettled country, if "wrested from the common enemy of the blood
and treasure of the thirteen states, should be considered common
property, subject to be parcelled out by Congress into free, conven-
ient, and independent governments, in such manner and at such
times as the wisdom of that assembly shall direct.

The first direct announcement by Congress of the policy of or-
ganizing new states or distinct governments in the North West, is
contained in the journal of Congress for October 10, 1780: "Resolved
that the unappropriated lands that may be ceded or relinquished
to the United States by any particular state, pursuant to the recom-
mandations of Congress of the 6Th. of September last, shall be dis-
posed of for the common benefit of the United States, and be set-
tled and formed into distinct republican states, which shall be-
come members of the Federal union, and have the same rights of
sovereignty, freedom, and independence, as the other states; that
each state which shall be formed shall contain a suitable extent
of territory, not less than one hundred or more than one hundred
fifty miles square, or as near thereto as circumstances will ad-

1. Manasseh Cutler, I., I23 ff.
2. Ibid. 336.
mit; that the necessary and reasonable expenses which any particular state may have incurred since the commencement of the present war in advancing any British posts, or in maintaining posts or garrisons within and for the defense, or in acquiring any part of the territory that may be ceded or relinquished to the United States, shall be reimbursed. That the said lands shall be granted or settled at such times and under such regulations as shall hereafter be agreed upon by the United States in Congress assembled, or any nine of them."

On May 1, 1782 the following resolution was embraced in a report made by a committee to whom had been referred the cessions of New York, Virginia and Connecticut, and petitions from Indiana, Vandalia, Illinois, and Wabash Land Companies:

"Resolved that whenever the United States in Congress assembled shall find it for the good of the Union to permit new settlements of unappropriated lands, they shall erect a new state or states, to be taken into the Federal Union in such manner that no one state so erected shall exceed the quantity of 150 miles square, and that the same shall be laid out into townships of about six miles square. The journal does not show that this resolution was adopted, but it indicates the prevailing views at the time.

The next expression of congressional policy is found in the adoption of a report made by Messrs. Jefferson, Howell and Chase, April 23, 1784. In this case the previously declared intentions of Congress in regard to new states were so far consummated as to work out the general outlines of a governmental scheme. On May 7,
of the same year Jefferson reported to Congress an ordinance providing for the division of the land into townships 10 miles square, each mile to be 6080 feet in length, thus dividing the township into 100 lots of 640 acres each. These efforts were evidently unsatisfactory, as no attempt was ever made to effect a settlement of territory under their provisions.

The next report, April 26, 1785, proposed townships 7 miles square with sections of 640 acres each, or 49 in a township, of these one section, number 16, was to be set apart for school purposes, and one section, number 29 for support of religion. This latter provision was stricken out by a singular expression of the legislative will. Of the 23 members present, 17 voted to retain, and 6 to strike out, but the votes being by states, the rules gave the small minority the control over that question, and the section for support of religion was stricken out of the bill.

On May 20, 1785, soon after the ratification of the treaty ceding the western lands to the Federal government, Congress proceeded to provide by ordinance for the future survey and sale of the public domain in the west. The ordinance fixed the system substantially as it has remained ever since; that is, surveys to be made by the government in ranges, towns and sections, townships 6 miles square, divided into 36 sections of 640 acres each; title

I. For the texts of these ordinances see Manasseh Cutler, II, 407; and same work, I, 123 ff.
3. Ibid. I, 123 ff.
to be obtained only by entry in a government office of a tract surveyed and recorded. The Secretary of War was directed to reserve one seventh of the land surveyed for the use of the continental troops. Four sections in each township were reserved for future sale by the United States, and one section (16) for the use of schools. Three townships on Lake Erie were allotted for the use of refugees from Canada and Nova Scotia, and the towns of Guadenton, Schoenbrun and Salem, on the Muskingum, were given to the Moravian Indians, already settled there. The residue was to be distributed among the states, to be sold according to regulations prescribed by Congress, and at the price of one dollar per acre. The provision for section 16 has been retained. All this is substantially the New England theory.

By the terms of the ordinance of May 20, 1785, "a SURVEYOR from each state shall be appointed by Congress, or a committee of the states, who shall take an oath for the faithful discharge of his duty, before the Geographer of the United States, who is hereby empowered and directed to administer the same, and the like oath shall be administered to each chain-carrier by the surveyor under whom he acts."

1. Land Laws, United States, 1828, 349.
2. Manassei Cutler, I., 125.
3. Ibid., II., 431.
"The surveyors, as they are respectively qualified, shall proceed to divide the said territory into townships 6 miles square by lines running due north and south, and other crossing them at right angles, as near as may be, unless the boundaries of the late Indian purchases may render the same impracticable, and then they shall depart from this rule no further than such particular circumstance may require. 

"The first line running north and south as aforesaid, shall begin on the river Ohio, at a point that shall be found due north from the western termination of a line which has been run as the southern boundary of the state of Pennsylvania; and the first line running east and west shall begin at the same point, and shall extend throughout the whole territory, provided that nothing herein shall be construed as fixing the western boundary of the state of Pennsylvania. The Geographer shall designate the townships, or fractional parts of townships, by numbers progressively from south to north; always beginning each range with number 1, and the ranges shall be distinguished by their progressive numbers to the westward. 

"The plats of the townships respectively shall be marked by subdivisions into lots of one mile square, or 640 acres, in the same direction as the external lines, and numbered from 1 to 36; always beginning at the succeeding range of the lots with the number next to that with which the preceding one concluded.

I. Manasseh Cutler, II., 431, 2.
By section 7 of the ordinance of 1787, it was enacted that
"Previous to the organization of the general assembly, the Govern-
or shall appoint such magistrates and other civil officers, in each
county or township as he shall find necessary for the preservation
of the peace and good order of the same.

Provision for the first civil township in the west was made
in 1790 by an act of Governor St. Clair and the Judges of the North-
West Territory, but these towns were invested only with rudimentary
powers. It was enacted that each county should be divided by the
justices of the court of quarter sessions into townships with such
"bounds natural or imaginary, as shall appear to be most proper,"
and for each the court shall appoint a constable to act "specially"
for the township and generally for the county, also a clerk and one
or more overseers of the poor.

The act, with a few minor omissions, is as follows:

"An act to authorize and require the Courts of General
Quarter Sessions of the Peace, to divide the Counties into Townships
and to alter the boundaries of the same when necessary, and also to
appoint Constables, Overseers of the Poor, and Clerks of the Town-
ships, and for other purposes therein mentioned. Passed at Cincin-
nati in the County of Hamilton, the sixth day of November, in the
year of our Lord, one thousand seven hundred and ninety, by his Ex-
cellency Arthur St. Clair, Esquire, Major General in the late armies
of the United States, and Governor and Commander in Chief of the

I. Poore's Charters, I., 430; Revised Statutes of Illinois.
Territory of the United States north-west of the river Ohio, and the honourable John Cleves Symmes and George Turner, Esquires, Judges in and over the territory aforesaid."

Sec. 1. Be it enacted, that as soon as may be after the publication of this act, the justices of the Court of general quarter-sessions of the peace in the several counties within this territory, shall in their sessions respectively, proceed to divide the said counties into townships, assigning to such townships respectively such limits and bounds, natural or imaginary as shall appear to be most proper, having due regard to the extent of country, and number of inhabitants residing therein; and the said townships or any of them to subdivide from time to time whenever the interest and convenience of the inhabitants thereof may seem to require it. And the justices in session as aforesaid shall cause their clerk of the court to enter of record on the docket of the said court the particular time when each township is set off, and the specific boundaries assigned thereto.

Sec. 2. And be it enacted that the said justices in session in each and every county shall respectively nominate and appoint annually in every township within their county, one or more constables, each of whom shall continue to serve as a constable of the township specially, and as a constable of the county generally for the term of one year next ensuing his appointment; and his power and duty shall be to serve all such summonses, warrants, subpoenas, mittimusse, and other lawful precepts, as shall be directed to him specially, or to him generally with the others, or any com-
stable of the county, and be put into his hand for the purpose of service, and generally to do and perform all duties and services incumbent on him as an officer of the township or county, or of the several courts of law, and justice which may from time to time be appointed and held in the county for which he may be a constable; and furthermore to do all and singular the duties now or hereafter to be enjoined by law.

Sec. 3. And be it further enacted That the said justices in session in their respective counties, shall annually appoint one or more overseers of the poor in each and every township of the county, to serve for the term of one whole year, and it shall be the duty of every such overseer to make report to any such justice of the peace, in and for the county, of all vagrant persons likely to become chargeable to the township for which he is appointed overseer.

Sec. 4. And be it further enacted That the justices in sessions as aforesaid shall appoint in each township throughout the several counties respectively a clerk of the township during good behavior, whose duty it shall be to keep a fair book of entries, containing the particular marks and brands assumed for distinguishing the horses, cattle, hogs, or other beasts of such inhabitants of the township as may choose to be at the expense of thus registering the same, and the name and particular place of abode of every such inhabitant shall at the same time be entered therein and for every mark or brand so registered, the clerk of the township shall be entitled to demand and receive of the person employing him, the sum of one quarter of a dollar, and no more. And that it may be
readily known to what particular township estrays belong, the justices in session as aforesaid shall assign to each and every township a distinct letter of the alphabet to be taken and used, as the particular and general brand of the same township by all the inhabitants thereof, who shall cause the form of such letter to be impressed upon one or both of the horns of every bull, cow, and ox, and upon one or both of the shoulders of every horse, mare and colt to such inhabitants respectively belonging." Provision is also made for the registering by the town clerk, of any estray found, and penalties for not reporting the taking up of an estray. No laws were adopted on taxation until 1792.

The above law was repealed in part by "an act providing for the appointment of constables." approved December 2, 1799. By this act the court of quarter sessions was authorized to appoint one or more constables in each township who should serve for one year and so long thereafter as may be sufficient for their successors in office to have notice of their appointment, take the oath, and enter on the duties of their offices.

In 1802 the general assembly of the North West Territory provided for a more popular organization by "an act to establish and regulate township meetings." Approved January 18, 1802. It was enacted:

I. Laws of Governor and Judges, N. W. Territory, 1791, 47.
Sec. 1. That the townships in the several counties in this territory, as they are or may be laid out and designated by the courts of general quarter sessions of the peace of the said counties respectively, be, and they are hereby declared districts for the purposes of exercising and enjoying certain rights and privileges hereinafter defined.

Sec. 2. That it shall be the duty of the courts of general quarter sessions of the peace in the several counties, at their first or second session after the first day of February next, to issue their warrant to a constable of each township in their counties respectively, appointing the time and place for the first meeting of the electors of each township, and directing the officers then and there to be chosen; a copy of which warrant shall be set up by the constables in three of the most public places within the township, at least ten days before the day of such meeting and the electors when assembled, shall have the same powers and perform the same duties as are hereinafter provided." All free males over 21 years of age and who pay a county or territorial tax should convene on the first Monday of April yearly. They should elect a chairman, township clerk, three or more trustees or managers, two or more overseers of the poor, three fence viewers, two appraisers of houses, one lister of taxable property, a sufficient number of supervisors of roads, and one or more constables.

Thus a town meeting was instituted, but for election purposes only. All the officers elected at town meeting were elected by ballot. The duties of the town clerk were about as now; the trus-
tees or managers exercised the general supervisory powers of the
town board, they divided their respective townships into districts,
allothing to each supervisor one, settled accounts of supervisors
of highways and overseers of the poor, for which purposes the said
trustees, supervisors, overseers of the poor, and township clerk
met annually on the first Monday of March.

Another act entitled "an act to authorize the Courts of Com-
mon Pleas to divide the counties into Townships and to alter the
boundaries of the same when necessary," was passed September 17,
1807 by the general assembly of Illinois Territory. It was sim-
ilar to the act passed by the Governor and Judges of the North
West Territory in 1790; in fact many of the laws enacted by the
North West Territory, and Indiana Territory were reenacted by the
legislature of Illinois Territory. The act of 1807 is as follows:

Sec. 1. The Judges of the court of Common Pleas in the sever-
al counties within this territory, shall in their terms respective-
ly proceed to divide the said counties into townships, assigning
to such townships respectively, such limits and bounds, natural or
imaginary, as shall appear to be most proper, having due regard to
the extent of country and number of inhabitants residing within
the same; and the said townships or any of them to subdivide from
time to time, whenever the interest and convenience of the inhabi-
tants may seem to require it; and the said court of Common Pleas
shall cause their clerk to enter of record on the docket of the

I. I T. L. c. 16.
same court, the particular time when each township is set off, and
the specific boundaries assigned thereto.

Prior to 1820 the inhabitants of Illinois were almost exclusively from Virginia, Kentucky and the Carolinas, the majority being
settled in the southern end of the state. Consequently the con-
stitution of 1818, and the laws made under it organized the count-
ies upon the Virginia model. The Congress of the United States
had divided the state into townships and given one mile in each
township for school purposes. To give effect to this provision,
the state enacted a law making the township a body corporate for
school purposes. Soon the County election district was made to
coincide with the school township. Constables, Justice of the
Peace, road supervisors, and overseers of the poor had their juris-
diction determined by these same township lines.

With the admission of Missouri as a slave state, Northern Ill-
inois began to be occupied by settlers from the eastern and middle
states, while southern emigration was directed to Missouri. A
long and bitter sectional struggle ensued, terminating only with
the revised constitution of 1847.

1. "AN ACT relating to the lands reserved for the use of schools".
CHAPTER II.

THE CONSTITUTIONAL CONVENTION OF 1847.

Under the conditions of the government survey, every man held his land by a deed which reminded him that his freehold was part of a township, and there is much even in a name.

As New England town life grew up around the church, so western localism finds its nucleus in the school system. Thus we see that the township, which at first was a tract of land laid out by the judges with boundaries real or imaginary, and in size varying to suit conditions, has become a definite local division ready to be made the unit of our local government system.

The additional strength gained by the New England faction, with the admission of Missouri to the Union as a slave state, made the north or New England element dominant, when the question of a new constitution was brought up.

The convention of 1847 met pursuant to an act of the general assembly, approved February 20, 1847. The question had been submitted to a vote of the people and only in the following counties was there a greater vote against than for the convention: Alexander, Williamson, Perry, Edwards, Monroe, St. Clair, Clinton, Madison, Jasper, Jersey, Shelby, Edgar, Menard, Tazewell, Woodford, Henderson, Grundy, Kendall, DeKalb. The vote in Jackson was a tie, and no returns were received from Stephenson. See map.

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1. See Local Govt. in Ill. Albert Shaw, J. S. U. Studies Vol I.
2. Laws 1847, 35.
Counties voting against having constitutional convention of 1847.

Neg, no returns.
Although the calling of the convention was claimed not to be a party measure, delegates were elected on party lines in every county except Morgan, where by an agreement of parties, four non-artisan delegates were appointed. The convention consisted of 162 delegates who met in Springfield on the first Monday in June 1847. The only records available are the journal of the convention and newspaper files.

The subject of townships seems to have received considerable attention. On June 10, a resolution "that there be added to the standing committees, a committee on townships, with instructions to report whether it is expedient so to amend the constitution as to provide for the incorporation of the several townships in this state for municipal and other purposes," was not adopted, but on June 24, a special committee of eleven persons was "appointed to enquire into the expediency of abolishing the commissioner's court and providing for the organization of townships, which townships shall have the general superintendence of their fiscal affairs, and also to report a plan for the better administration of county affairs.

I. Anthony's Constitutional History, 103.
4. The northern members wished the delegates apportioned according to the new apportionment act of that session based upon the census of 1845 (662,125); the south preferred the old apportion-
Petitions were from time to time received from inhabitants of northern counties praying for the abolition of the county commissioner's court, and the establishment of some precinct or township organization, and were referred to the committee on organization of townships.

On July 16, the special committee on the organization of townships and the management of county affairs, reported the following article:

Sec. 1. The general assembly shall provide by law that the townships and parts of townships in the several counties in this state may become incorporated for municipal and other purposes.

Sec. 2. All township officers shall be elected annually and their number, powers, duties and liabilities shall be fixed by law.

Sec. 3. The general assembly shall provide by law for the creation of a board of supervisors in the several counties of this state, to be composed of one or more officers from each township and city in the county, for managing the affairs of the county. The powers and duties of the board of supervisors shall be fixed by law.

Sec. 4. The general assembly shall provide by law, that the qualified voters of the several counties of this state may abolish the county commissioner's court, and substitute therefor, the result on the census of 1840 (476183). By making their contention prevail, the north gained many delegates, the increase of recent years being largely in the north. Davidson & Stuve, 5-3.
board of supervisors.

The report was laid on the table.

On August 16, was offered the following as an additional section: The legislature may pass a general law authorizing township organization in all counties in which a majority of the legal voters may, at any general election, vote for such township organization, and when such township organization shall be established in any county, then the county court hereinbefore provided shall cease to transact county business in such county. The additional section was adopted.

On August 20, the report of the select committee on the organization of townships and the management of county affairs, was taken from the table for consideration and the first and second sections were adopted. The vote on the adoption of the first section was afterwards reconsidered, when it was stricken out, and the following inserted in lieu thereof: The legislature shall provide by law that the legal voters of any county in the state may adopt a township form of government within each county by a majority of votes cast at any general election within such county.

The first section as amended was referred to the committee on

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4. Journal, 446.
Vote on township organization in the convention of 1847.
red, not voting            white, for proposition.
black (vertical), equally divided.
opposite 27            do. (horizontal), against the proposition.
Counties in which there were more votes against than for the adoption of the constitution of 1847.
revision and adjustment, where it gives to the form in which it appears in Art. 7, Sec. 6, of the constitution of 1848.

Upon the final vote, the southern counties, generally speaking, voted against the section, while the northern counties voted for it; in the central portion, the counties along the Mississippi and along the Indiana boundary voted for the measure, while those centrally located were generally against it. See map.

The constitution was ratified by the people, March 3, 1848; InPalo and Monroe being the only counties casting an adverse vote. No one seemed entirely satisfied with the new constitution, yet all concurred that the new was preferable to the old.

Some of the western states at this time had systems similar to that conceived by the convention. Ohio had passed acts in 1831 and 1833, evidently patterned after New York's system but very rudimentary and brief. Iowa's enactment of 1842 was similar so far as it goes but the subject of local government there does not seem to have been causing much anxiety.

I. Davidson & Stuve, 545.
CHAPTER III

FIRST ATTEMPTS AT ORGANIZATION.

Pursuant to the provision of Article vii, section 6 of the constitution just adopted, the legislature passed "AN ACT to provide for township and county organization, under which any county may organize whenever a majority of voters of such county, at any general election shall so determine," In force April 16, 1849.

The bill provided that at the next general election the qualified voters should vote for or against township organization. The clerk of the County Court should enter an abstract of the returns, and if it appeared by the returns that a majority of all the votes cast for or against township organization was for township organization, then the county should be governed by the provisions of this act on and after the first Tuesday in April, 1850.

The County Commissioners should appoint three commissioners to divide such county into towns by making as many towns as there are townships by government survey, and record the names and bounds of each town to the clerk of the county court by March 1, 1850.

The clerk of the county should then make out notices to each town designating a place for holding the first town meeting.

Each town as a body corporate should have capacity—

1st. To sue and be sued in the manner prescribed in the laws of this state.

2d. To purchase and hold lands within its own limits, and for the use of its inhabitants, subject to the power of the general

I. Approved Feb., 12, 1849; Laws 1849, 190.
assembly.

3d. To make such contracts, purchase and hold such personal property as may be necessary to the exercise of its corporate or administrative powers.

4th. To make such orders for the disposition, regulation or use of its corporate property as may be deemed conducive to the interests of its inhabitants. No town shall possess or exercise any corporate powers, except such as are enumerated in this act, or shall be specially given by law, or shall be necessary to the exercise of the powers so enumerated or granted. All acts or proceedings by or against a town in its corporate capacity, shall be in the name of such town; but every conveyance of lands within the limits of such town, made in any manner for the use or benefit of its inhabitants, shall have the same effect as if made to the town by name.

These powers are all among those of the old County Commissioner's Court, which was abolished.

The annual town meeting of the whole voting population is the

I. Identical with powers in New York system then in vogue, I R. S. 337, Ch. II, Art. I. (5d. Ed.)

2. The old Commissioner's Court was abolished by the constitution of 1848, Art. 7, Sec. 6, and counties not under township organization are governed by the county court, composed of the county judge and two associate justices, who have all the powers of the old commissioner's court. For the law in force before the
central fact in the town government. They choose one supervisor, one town clerk, one assessor, one collector, one overseer of the poor, three commissioners of highways, two constables, two justices of the peace, as many overseers of highways as there are road districts in the town, and as many pound masters as the electors may determine. The assessor and commissioners of highways are ex officio fence viewers.

The electors shall have power at the town meeting:

1st. To determine the number of pound masters and the locality of pounds.

2d. To elect such town officers as may be required to be chosen.

3d. To direct the institution or defense of suits at law or in equity in all controversies where such town shall be interested.

4th. To direct such sum to be raised in each town, for prosecuting or defending such suits, as they may deem necessary.

5th. To make rules and regulations for ascertaining the sufficiency of all fences in such town and for emboxing animals.

6th. To determine the times and manner in which cattle, horses, mules, asses, hogs, sheep, or goats shall be permitted to go at large.

7th. To impose such penalties on persons offending against

adoption of the constitution, see L. S. 1845, Ch. 27.

I. Taken from I R. S. I. Y. 3d. Ed. Title II Art. I, Sec. 4.
any rule or regulation established by such town, excepting such as relate to the keeping and maintaining of fences, as they may think proper, not exceeding ten dollars for each offense.

8th. To apply such penalties when collected in such manner as they may deem most conducive to the interests of such town.

Special town meetings shall be held to supply vacancies in the several cases hereinafter provided for. They shall be held when the supervisor, town clerk and the justices of the peace or any two of them together with twelve other freeholders of the town shall, in writing file in the office of the town clerk, a statement that a special town meeting is necessary to the interests of the town, and the town clerk shall then, by posting notices in five of the most public places in the town, giving at least ten days notice of such special town meeting, and such meeting shall act on no subject which is not specified in the notice calling such meeting.

The town meeting is opened between nine and ten o'clock in the morning by the electors then present, who choose a moderator. The town clerk shall be clerk of the meeting. After the polls have been proclaimed open, the supervisor, town clerk, assessor,

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1. Same powers as in New York system, I R.S. 340, Tit. 2 Art. 1
2. cf. I R.S. N.Y. Ch. II Tit. 2, Art. 1 Sec. 15.
3. In N.Y. a Justice of the Peace presides; a moderator is chosen only when no Justice is present. I R.S. Tit. 2 Art. 2, Sec. 19.
4. I R. S. N. Y. Tit. 2 Art. 2, Sec. 22.
overseer of the poor, collector, commissioners of highways, constables and justices of the peace, shall be chosen by ballot. All other officers shall be chosen either by ballot, yeas and nays, or by dividing the electors. All the town officers shall hold office for one year, except the justices of the peace who hold for four years.

The supervisor is general manager of the town and also member of the county board. He receives and pays all moneys for the town, and prosecutes for certain penalties. Process against the town in all legal proceedings shall be served against the supervisor.

The town clerk keeps all the books, records and papers of the town.

The supervisor, town clerk, and the justices of the peace, shall constitute the board of auditors. They examine the accounts of the overseers of the poor and the commissioners of highways. The town clerk and the justices examine the accounts of the supervisor. The board also audits all claims and charges payable by their respective towns.

Each county as a body corporate has capacity to sue and be

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1. Subject matter identical with N.Y. Statute, I R.S. Ch. II, Tit. 3 Art. I. Sec. 2. (Sec. 49)
2. One year for all officers in N.Y. I R.S. Ch. II, Tit. 3 Art. 2
3. Only certain moneys in N.Y., I R.S. ChII Tit. 4 Art. 1. Sec. I.
4. I R. S. Ch. II, Tit. 4, Art. II Sec. 2. (N. Y.)
5. Same in N.Y., I R.S. Ch. II, Tit.4, Art. 2, Sec.II.
6. " " " " " " " " " " 5 " 47.
sued, to purchase and hold land within its limits, to make necessary contracts and to hold such property as is necessary to the exercise of its corporate powers, to dispose of its property to the interests of its inhabitants, and shall exercise no other corporate powers. All acts by or against a county in its corporate capacity shall be in the name of the board of supervisors, and the powers political of the county can only be exercised by them.

The supervisors of the several towns meet annually on the first Monday after the general election and choose a temporary chairman. They have power to make orders concerning the corporate property of the county, audit accounts against the county, and provide for their payment, audit accounts of town officers, take charge of the poor and the management of poor houses, and equalize the assessment roll.

The clerk of the county court shall be clerk of the board and shall keep a record of the proceedings.

I. Same in New York, I R.S. Ch. 12, Tit. 1, Art. 1, Secs. 1, 2.
2. " " " " " " " " " " " " " " " " " 3, 4.
3. Boards of supervisors meet annually in N.Y. on different days in different counties. I R.S. Ch. 12, Tit. 2, Art. 1, Sec. 1.
4. Commissioner's Court had four sessions, Ch. 27, Sec. 22, R.S. 1845.
5. Same powers as possessed by Commissioner's court, see R.S. Ill. 1845, Ch. 27.
6. Power held by Commissioner's Court, see R. S. 1845, Ch. 30.
7. Cf. I R.S. N.Y. Ch. 12, Tit. 2, Art. 1, Secs. 4, 5.
8. In N.Y. Some person is appointed during the board's pleasure.
The county treasurer when elected shall file a bond satisfactory to the board of supervisors. He shall receive and pay out all moneys according to law and shall exhibit his books at the annual meeting of the board of supervisors. He collects taxes charged against delinquents or non-resident lands, and can make sale thereof for the same.

The assessor shall, between the first of May and July in each year, proceed to ascertain by diligent inquiry, the names of all the taxable inhabitants, and also all the taxable property in his town, and shall enter the same on an assessment roll. The assessment rolls shall be completed or before the first day of August in each year, and he shall have a copy for inspection by the inhabitants during twenty days, and at the expiration of said time he shall set a day when, at some desirable place, he shall be ready to review the assessment on application of any person conceiving himself aggrieved. If there are no objections made, the assessor signs and certifies to the roll. It is then equalized and delivered to the collector on or before the fifteenth day of December. The collector shall, in case of refusal or neglect to

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1. I R.S. N.Y., Ch. 12, Tit. 2, Art. 2, Secs. 33, 34, 35, 38. (30, Sec 18)
2. Under County System, Co. Treasurer was assessor, R.S. 1845 Ch.
3. Taken from I R.S. N.Y., Ch. 13, Tit. 2, Sec. 3.
4. " " " " " " " 18, 20, 21, 23.
5. Under the County System the Sheriff was ex officio, county collector, Ch. 37, Sec. 27, R. S. 1845.
6. Taken from I R.S. N.Y., Ch. 13, Title 2, Sec. 36.
pay, give notice of the time and place, when and where the property of the person so refusing or neglecting will be sold, at least six days previous to the sale, by advertisement to be posted up in at least three public places in the town where such sale is to be made.

The collector shall pay over money to town officers and to the county treasurer and receive receipts.

It shall be the duty of the commissioners of highways in the several towns who have the care and superintendence of the highways and bridges therein:

1st. To give directions for the repairing of the roads and bridges within their respective towns.

2d. To regulate the roads already laid out, and to alter such of them as they, or a majority of them, shall deem unnecessary.

3d. To cause such roads used as highways, as have been laid out but not sufficiently described and such as have been used for twenty years but not recorded, to be ascertained, described, and entered on record in the town clerk's office.

4th. To cause the highways and the bridges which are or may be erected over streams intersecting highways, to be kept in repair.

5th. To divide their respective towns into so many road districts as they shall deem convenient, by writing under their hands,

I. Taken from I R.S. N.Y., Ch. 13, Tit. 3, Art. 1, Sec. 6.
2. " " " " " " " " " " " " I3. (R.S. 1845)
3. Powers formerly possessed by Co. Cons'rs., C. 95, Secs. 10, 11.
to be lodged with the town clerk, and by him to be entered in the town book. Such division to be made annually if they shall think it necessary, and in all cases to be made at least ten days before the annual town meeting.

6th. To assign to each of the said road districts such of the inhabitants, liable to work on highways as they shall think proper, having regard to proximity of residence, as each as may be.

7th. To require the overseers of highways, from time to time, and as often as they may deem necessary, to warn all persons assessed to work on highways, to come and work thereon, with such implements carriages, sleds, cattle or teams, as the said commissioners or any one of them shall direct. They shall also have power to lay out new roads and discontinue old ones and to perform many other offices incident to a good condition of the highways. The commissioners shall report to the board of town auditors, in writing at their annual meeting.

The commissioners of highways of each town shall meet within eighteen days after they shall be chosen, at the place of town meeting, and afterwards at such time and place as they shall think proper.

The overseers of highways make list of persons subject to road labor, give notice to them when and where to work, and have general supervision over the work done on the highways.

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1. Identical with N. Y. Law, I R.S. Ch. 16, Tit. I, Art. I, Sec. 1.
2. Possess powers of old Supervisors of Highways, Ch. 93, Secs. 12-17, R. S. 1845.
3. Ch. I R.S. N.Y. Ch. 16, Tit. I, Art. 7, Sec. 6 et seq.
Counties organizing in 1849.

opposite 37
The fourth section, declaring that "if it shall appear by the returns of said election, that a majority of all the voters cast to or against township organization is for the township organization, the county so voting in favor of its adoption, shall be governed by and subject to the provisions of this act on and after the first Tuesday in April, 1849" was declared unconstitutional.

At the session of the legislature next ensuing, this law was amended, or rather a substitute for it was adopted. The fourth section was changed to conform to the requirements of the constitution, and some additions were made. By the fourth and fifth sections of the twenty-fifth article, it was provided that upon the petition of fifty legal voters of any county acting under township organization, an election should be held at the next town meeting, for or against township organization, and if it should appear that a majority of all the voters voting at such election voted against such township organization, then the county should cease to act under such organization.

These two sections were declared unconstitutional by the Supreme court: "If the law providing for township organization should

I. People v. Brown, Ill Ill. 478.
2. An act to provide for township organization, Approved February 17, 1851; Laws 1851, 35.
3. People v. Couchman, 15 Ill. 142.
be repealed, it must be done by pursuing the same course which was required to be observed in the adoption of the law.

In borrowing the law from the statute of New York, and adapting it to our general statutes, many omissions, errors, and imperfections occurred, which soon required correction. The act of 1851 had been amended at various times, and several independent acts passed, but still it was unsatisfactory, and another act was demanded. The purpose of the act of 1851, said Mr. Haines, then a member of the house, was "to preserve as much of the act of 1851 and amendatory acts, as could be consistently retained, making necessary corrections, and to add such new provisions as experience under the system seemed to demand, and vital to make no further

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1. Provision in the constitution of 1846, that a majority of voters of a county must concur, held to be satisfied by concurrence of majority of votes cast at election. People v. Warrfield, 20 Ill.150, (1856), so the sections appearing in the later laws are constitutional. The United States Supreme Court in a case appealed from Missouri, Harshman v. Bates County, 2 Otto, 569, decided a similar case exactly the other way.

2. Laws 1851, 155; Laws 1854, 27; Laws 1857, 46; Laws 1857, 555; Laws 1858, 212; Laws 1858, 401; Laws 1857, 183.

changes in the law than were actually necessary to perfect the sys-
tem and adapt it to our general statutes."

The subject originated in the house of representatives, and
was referred to the committee on township organization, with instruc-
tions to enquire into the expediency of reducing the act to pro-
vide for township organization, and the several amendatory acts
into one act, and to amend the same, and report thereon. The aim
of the committee was to reform as far as possible, the errors and
confusion existing in the old law, and to arrange the different
subjects comprised under distinct heads, in methodical order, ren-
dering the act more perfect in itself, and a reference to any por-
tion of it more easy and convenient. The time allowed the commit-
ttee during a session of six weeks, in the midst of other not less
important legislative duties, was necessarily short, compared with
the labor and care which this important subject demanded. It is
therefore not surprising that some errors have chanced to occur.

The law was as its title implies "an act to reduce the act to pro-
vide for township organization, and the several acts amendatory
thereof, into one act, and to amend the same."

Among the new features of this act were a provision for the
division of real estate, money and apportionment of debts, when

2. The section on discontinuance of the system was not in accord-
ence with the court's decision in 15 Ill. 142.
3. Laws 1861, 216; approved February 20, 1861.
town is divided into two or more towns, Art. 3, Sec. 1, 5, 6, 9; provision for compensation for town auditors, Art. 11 Sec. 4, and for the publication of the proceedings of the board of supervisors, Art. 14, Sec. 18.

This act, with amendatory acts, remained in force until after the adoption of the constitution of 1870. Of the amendatory acts a few are important enough to deserve mention and to be compared with like provisions in some neighboring states.

A local board of health was created for the township in 1865, consisting of the supervisor, assessor and town clerk. It might quarantine houses and take other measures to prevent the spread of contagion. The act was made subject to acceptance or rejection of each county. This act is similar to the Michigan act enacted before this time, whereby the township board (consisting of the supervisor, the two justices of the peace whose terms expire soonest, and the township clerk) constitutes the board, and quite different from the Wisconsin provision whereby the town board, village board and common council of every town, village and city, after each annual election, organize as the board of health, or appoint wholly or partially from its own numbers, a suitable number of competent persons, who shall organize as a board of health.

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1. Laws 1867, 169, 172; Laws 1865, 75; Laws 1869, 407; Laws 1869, 406; Laws 1871, 2, 643; Laws 1871, 2, 756; Laws 1871, 2, 757.
2. Laws 1865, 75.
3. Compiled Laws, 1846--
4. Secs. 1-3 Ch. 26, R.S. Wis. 1849.
Counties at present not under township organization.

opposite 41
In 1867 the supervisor of each town was the ex officio, overseer of the poor in his town. In Iowa, the township trustees are overseers, C. 1897, Sec. 574, Ch. 10; in Wisconsin the supervisor fills that office, Sec. 1501, Ch. 63, R.S. 1898; in Missouri the county court has supervision, Sec. 7327 Ch. 139 R.S. 1869; while in Nebraska, the justices of the peace take care of the poor, Sec. 4, Ch 67, C.S. Neb. 1899.

An act providing for the payment of road tax in money was approved March 11, 1869, whereby the voters may at town meeting provide that thereafter the road tax shall be paid in money only.

By an act approved April 2, 1872, the legal voters of a town may, by the adoption of resolutions at town meeting authorize the supervisor to sell real estate owned by the town.

Thus we see that by this time the system appears about the same as it is today.

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1. Laws 1869, 172.
2. Laws 1869, 406.
3. Missouri provided for the payment of all road taxes in money in 1883, Laws 1883, 473. In Wisconsin and Iowa the citizens in 1849 had power to determine if any portion of the tax should be paid in labor, Sec. 1-3, Ch. 112, R.S. Wis. 1841; C. '51, Sec. 568 Iowa. In Nebraska one fourth of the road tax must be paid in cash. Sec. 79, Ch. 78, C.S. Neb. 1899.

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CHAPTER IV.

THE INTERNAL IMPROVEMENT CRAZE - STATE AID TO RAILROADS.

The history of the Illinois town hardly begins until the year 1836 when the legislature passed an act known as "An Act to establish and maintain a general system of internal improvement." Aside from the legislation of 1819 and 1827 making the township a body corporate for school purposes, no considerable attention had been given to the town. A brief account of this famous legislation will not be out of place.

The legislature elected August 1836 was supplemented by an internal improvement convention, composed of many of the ablest men of the state, which was to meet at the seat of government simultaneously with the legislature. It is probable that the more zealous advocates of the project entertained doubts regarding the stamina of the honorable members of the legislature when the vast project should be fully brought forward for action. Two questions came up for decision; one was the project to move the state capital from Vandalia; the other to provide for internal improvement. The latter question was stubbornly contested, and the vote appeared to be about even; when it was discovered that "the long nine" (the seven representatives and two senators from Sangamon) held the balance of power on the internal improvement question; it was also discovered that Springfield was a candidate for the location of the new state capital. The matter was arranged so that the capital was moved to Sangamon, and the "long nine" put through the internal improvement bill.

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I. Davidson & Stuve, 434.
Vote in the senate on the internal improvement bill.

green, negative.

opposite 43 white, affirmative.
The enthusiasm of the promoters of this bill approached the ridiculous. It was urged that beyond any sort of doubt or question the railroads would build themselves, and that the whole thing would go through upon the endorsement of the state, without the expense of a dollar or any demand on the taxpayer. Governor Duncan said in his message on internal improvement, "should the state be true to her own interest and take one-half, or one-third of the stock in all works of internal improvements, she will hasten the completion of the most important first, and secure to herself a lasting and abundant revenue to be applied upon the principles of the plan proposed, until the whole country shall be intersected by canals and railroads, and our beautiful prairies enlivened by thousands of steam engines drawing after them lengthened trains freighted with the abundant productions of our fertile soil."

The system contemplated the building of 1342 miles of railroad at a cost of $11,470,444.50. The legislature of 1839 entertained doubts of the feasibility of completing the whole system, and appointed a committee to investigate. In their report submitted Feb. 2, 1839, they declared that $14,000,000 would be sufficient to complete the system and considered everything favorable for the execution of the plan. Before the people realized what was going on, the state was in debt over $12,000,000. The system was finally repealed, but not until the state was unable to pay the interest on its bonds. The credit of the state was a by-word all over the con-

I. Senate Journal, 1836-7, 19.
2. Laws 1840, 98.
mercial world. The people were driven almost to the extremity of repudiation. The period continued from 1839 until 1847, during which time the high taxes and hard times made capital and immigrants I shun the state as they would the pestilence. In 1847 the convention adopted a two mill tax to pay the debt.

One of the delegates to the convention of 1870, speaking of this period said: "It was a glorious time for two or three years, but after the money ran through and was all gone, and my day came, the people had to pass through an ordeal such as no community perhaps on this continent ever went through before; it lasted twenty years; it paralyzed industry; it drove immigrants from the state; it reduced communities in the state to pauperism, comparatively speaking."

The principal provisions of the Internal Improvement Act were as follows: AN ACT to establish and maintain a general system of internal improvement. Approved and in force February 27, 1837. Three fund commissioners should be elected by joint ballot of the general assembly and biennially thereafter, who should be practical and experienced financiers. Each commissioner should give bond to the amount of $50,000. It was the duty of this board to contract for and negotiate all loans authorized to be effected by the general assembly on the faith and credit of the state, for objects of internal improvement, and they should sign and execute certificates of

I. Gain in population: 1810-30, 348%; 1830-40, 203%; 1840-50, 83%; 1850-60, 101%; 1860-70, 48%; 1870-80, 21%.
stock therefore, and should receive and deposit all money arising from such loans. For the purpose of promoting and maintaining a general system of internal improvements, there was created a board of public works, consisting of seven members, one from each judicial district, elected biennially by joint vote of the general assembly. They were styled "The Board of Commissioners of Public Works." They should give a bond of $20,000 and no commissioner was to have in his hands more than that amount at any one time. The duty of the board was to locate, superintend, direct and construct on the part and behalf of this state, all works of internal improvement by the state. The following appropriations were made:

For the improvement of the Great Wabash River.................. $100,000
For the improvement of the Illinois River.......................... $100,000
For the improvement of the Rock River............................. 100,000
For the improvement of the Kaskaskia River......................... $50,000
For the improvement of the Little Wabash River..................... $50,000
For the improvement of the Western Mail Route...................... $250,000
Railroad from Cairo to termination of I. & M. Can. $5,500,000
Lo. from Alton to "St. Carmel" and Shawneetown..................... $1,500,000
Do. from Quincy to Indiana State Line............................. $1,200,000
Lo. from Peoria to Warsaw........................................... $700,000
Do. from Lover Alton to Central Railroad........................... $600,000
Lo. from Belleville to R.R. Alton to Mt. Carmel.................... $150,000
Lo. from Bloomington to Mackinaw................................. $350,000
Distributed among counties without railroad....................... 200,000

in proportion to census. (I)

The funds used for internal improvement consisted of all money raised by the sale of stocks or state bonds, or by virtue of loans authorized by law, and of all appropriations which were made from time to time out of the revenue of the state arising from land taxes and of all moneys arising from the tolls and water, and other rents of all the said works of internal improvement, and of all rents,

issues and profits arising from the lands purchased or entered by the state for the purpose of promoting and aiding in the construction and completion of said works, either by leasing or selling the same, and of the proceeds of all lands which may be donated by the general government in aid of internal improvements in this state, and of all grants or donations which may be received from individuals, companies, corporations, or the general government to aid in the completion of said works, and also all the profits and interests which may accrue from the said works, in any manner whatsoever, together with the balance, after paying the debt due from the state to the school, college and seminary funds, of the moneys received from the Treasurer of the United States under the provisions and operation of an act of Congress, providing for a distribution of the surplus revenue of the United States by depositing the same with the several states, and together with all net profits arising from bank and other stocks afterward subscribed for and owned by the state, after liquidating the interest on loans contracted for the purpose of such bank or other stocks. The board of fund commissioners was to contract for loans to meet expenses of internal improvements from time to time, in all not exceeding eight million dollars.

The people of Bond county, as soon as the act passed, had declared in a public meeting that the system must lead to taxation and utter ruin; that the people were not bound to pay any of the debt to be contracted for it, and that Bond county would never us-

I. Laws 1837, 121.
sist in paying a cent of it. Accordingly they refused to pay taxes for several years. The question of payment was considered a very dangerous one. Both political parties evaded it; at a Democratic state convention, a resolution offered against repudiation was laid on the table by an overwhelming majority, so as not to commit the party one way or another.

By 1850, 110 miles of the I342, were completed, nearly ten years after the system had been repealed. Most of the work seems to have been done on the rivers, but for the debt of $12,000,000, the people got practically nothing.

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I. Davidson & Stuve, 453.
CHAPTER V.

MUNICIPAL AID TO RAILROADS

The two mill tax served its purpose and the state securities were placed above par. On December 1, 1869 the state debt had decreased to $5,124,995.64. The two mill tax was discontinued under the constitution of 1870. Long before this time, however, the taxes had ceased to become burdensome to the people.

The desire to overcome the lack of natural means of transit, and the value and importance of railroads to promote the public welfare, were felt more and more stringently as years passed by, and railroads were constructed and made their advantages manifest in the eastern states. Finally the aid of Congress was invoked, cities, towns and counties were asked for aid to induce the construction of railroads. This demand of the people was at last urged so unitedly and forcibly that Congress, in 1850, made a munificent land grant to the state, to enable the construction of the Illinois Central railroad. The act stimulated all the other railroad enterprises which the people in various parts of the state had been promoting, and by 1852 the construction of railroads throughout the state was being pushed with great energy, the result of which was that in 1872, after twenty years of strenuous effort, between five and six thousand miles of railroad had been completed, which penetrated most parts of the state, and largely realized to the people in the benefits conferred, the anticipation of those who first labored for their construction.

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I. Population of Illinois in 1870, 2, 539, 691.
Railroads in the State in 1870.

opposite 49
Sparsely settled and unimportant townships voted fabulous sums. The town of Harmon, Lee county, with an aggregate of real and personal property of $56,000 voted a subscription of $50,000. Sullivan, Moultrie county, offered $185,000; the city of Quincy, when the convention of 1870 had convened, had made arrangements to expend $500,000 to build a railroad in Missouri and a provision was made in the constitution allowing them to do so. (Schedule, Sec. 24). The town of Vandalia subscribed $149,000 to the I. L. V. & T. H. R. R. Co.

By the construction of railroads it is safe to say that the value of land has been enhanced probably more than 25 per acre, (1895), independent of the cost of the improvements put up on them by the farmers. But estimating the rise in value strictly on the effect of the construction of the railroads upon the eligibility of the lands to market at $25 per acre, and the result shows a pecuniary benefit of many millions of dollars, very uniformly distributed to the original owners of the land. The average market value of these lands before the construction of the railroads did not exceed 2 per acre. When the roads were assured to be built, lands at once advanced to $15 and $25 per acre without improvements, and ever since that time have averaged a net revenue per annum fully as great as the cost of the lands to their original owners.

I. Debates of the convention of 1870, 647.
2. Ditto, 1762.
The bonds of these counties, townships and cities bore a high rate of interest and were apt to become a burden. To remedy this, the legislature in 1865 passed an act under which 1,367,800 worth of bonds were registered up to 1870. Counties and cities owing debts for railroad purposes were enabled thereby to reduce their interest from eight and ten per cent. payable semi-annually, to six per cent. annually. This was an act relating to county and city debts, and to provide for the payment thereof, by taxation in such counties and cities' approved February 13, 1865. It was provided that in all cases where counties or cities have hitherto under any law of this state issued bonds for money on account of any public improvement, and the same remain outstanding, or any debt arising thereout remains unpaid, the board of supervisors or county court of such county, and the city council or municipal authority of such city, as the case may be, having issued such bonds or securities may, on their surrender, issue in place thereof, to the holder or owner, new bonds, in such form, for such amount, on such time, and drawing such interest as may be agreed upon with the holder or owner. Provided, such new bonds shall not be for a greater sum than the principal and accrued interest unpaid of the bonds or debts in place of which they shall be given, nor bear a greater rate of interest than six per cent. per annum, and such bonds shall show on their face that they are issued under this act, and if so agreed, may provide for payment of five per cent. of the principal thereof, annually, until fully paid. On presentation of any such new bond, at the office of the auditor of public accounts for reg-
administration, he shall cause the same to be registered in his office, in a book to be kept for that purpose, such registration shall show the date, amount, number, maturity and rate of interest of such bond under what act, and by what county or city issued.

In all cases where any county or city shall issue bonds under this act, it shall be the duty of the county clerk of such county, or of the officer to whom or at whose office, the assessment rolls for state taxation, whether county or city, are or shall be returnable, within five days after such return, to make out and transmit to the auditor of state, to be filed in his office, a certificate stating the total value of all property, real and personal, within such county or city, exhibited by such assessment. Then the bonds of any county or city to the amount of twelve thousand dollars shall be so registered, the auditor shall annually ascertain the amount of interest for the current year, and shall add five per cent. of the principal to such bonds as provide for such addition, and this amount shall be levied on the said county or city, and said addition deemed added to and a part of the per centum which is to be levied for state revenue, and shall be collected in the same manner.

The state shall be deemed the custodian only of the tax so collected and shall not be deemed in any manner liable for the bonds.

Four years later in 1869 another still more liberal measure was passed. In the words of one of the representatives to the constitutional convention of 1870, it is the most remarkable law passed by any legislature in this country. It is nothing more or less

I. Laws 1865, 44.
than an ingenious contrivance to seize upon the state revenues and appropriate them to private purposes. It was passed by the influence of the lobby, over the Governor’s veto, and against the judgment of many of the most judicious persons in the general assembly. This measure was an ACT to fund and provide for paying the railroad debts of counties, townships, cities and towns. It was provided that where any county, township, city or town shall be indebted or shall create a debt under the provisions of any law of this state to aid in building a railroad near or through its territory, that shall be completed within ten years after the passage of this act, the state treasurer is required to place to the credit of such county, township, city or town, for the next ten years, all the state taxes paid in, on the increased valuation of the taxable property as shown by the annual assessment rolls, over and above the amount of the assessment roll of the year 1858, excepting the state school tax and the two mill tax, and whenever any county, township, city or town shall have created a debt as aforesaid, the collector of taxes is hereby required to pay into the state treasury annually for the next ten years, all the taxes collected on the property of the railroad for whose aid the said debt was incurred. The whole amount so received, with the exception of the state school tax, and the two mill tax, shall be credited to such county, township, city or town. The said funds shall be applied to the payment of the bonded railroad debt of such county, township, town or city. Any bond in order to obtain the benefits of this act shall be register-

I. Debates of the Constitutional Convention of 1870, 819.
ed by the auditor, who shall see to the payment of the interest. The state shall be deemed the custodian merely of the taxes so collected and shall be in no way liable for the payment of the bonds.

The bill was vetoed by the Governor, and upon reconsideration was passed over his veto.

The Governor said, in vetoing the act: "This bill contemplates in its direct provisions, however carefully or artfully expressed, the assumption by the state of the obligation, first, to pay the interest and afterwards the principal of all the railroad debts of counties, townships, cities and towns that are now contracted in aid of railroads already completed; and also to pay the principal and then the interest upon all the bonds of counties, townships, cities and towns, hereafter to be contracted, in aid of any railroad which shall be completed within ten years from the passage of the act; and in its ultimate, indirect consequences invites counties, townships, cities and towns to engage in railroad enterprises upon their own credit, with the delusive hope of ultimately succeeding in charging the debts they may contract upon the state treasury. Under the provisions of this bill, however, property of a particular description, as that of railroad corporations, in the counties, townships, cities and towns that have or may issue bonds in aid of their construction, is actually relieved from all taxation for general state purposes, and at the same time, while the property of all such counties, townships, cities and towns as have contracted railroad debts, under the provisions of this act, is taxed at a lower and different rate than the property in counties that owe no debt. Laws 1869, 316.
railroad debt."

The bill was discussed the next year in the constitutional convention with much warmth, pro and con. In the language of one member, "the state treasurer is to become a general broker and cashier for all those institutions; a growing system is built up in the state, at some day to be put in force, to cause this state to stand responsible before the world for the whole batch. It is but another form of replacing the state in precisely the position in which it was carried by the unwise and improvident railroad legislation of 1836 and 1837. Another said, "No law has met with more general approbation than that simple solitary act, and it ill becomes us coming up here as representatives of the people of the state to repeal a statute o which there has yet been received or heard from the people not a single objection. Another said, "The gentlemen from Alexander said that the people of the state do not complain of the passage of this law by the legislature. I do not know how it may be in his section of the country, but with all the people in our section, this law is considered a swindle, an outrage and a fraud upon the people of the state." It was referred to as the "tax stealing law", the "steal law", etc. Another delegate said, "The law in the first place was a premium to townships and counties to run into debt. Seeing others investing their credit in railroad enterprises, and thereby retaining in their hands their excess of

1. Debates, etc., 810.
2. Ibid. 811.
3. Ibid., 812.
taxation, is influencing townships, counties and towns to run into debt; while in other counties such excess goes into the state treasury—they are induced to go into debt for the very purpose of drawing from the treasury that excess or increase of taxation. This is done in self defense even, for instance, take a county which has already built its railroads; its property is increasing; its increase goes into the state treasury, while that of other counties is used by themselves, and hence such a county is induced to enter upon the system in order to equalize the scale. It will project enterprises and incur debts in this view; so that there is more danger now of counties, townships, etc., running into debt than there ever was before.

The bills did undoubtedly affect to some extent the credit of the state; the fact that the treasurer was employed in the payment of the bonds, gave color to the claim put forth by dealers in the bonds that they were guaranteed by the state. This idea seems to have been quite common in New York where many of the bonds were payable.

I. Debates of the Constitutional Convention of 1870, 856.
CHAPTER VI.

THE CONSTITUTIONAL CONVENTION OF 1870.

Besides the provision for township organization, the two questions pertaining to town government were 1st, The question of municipal subscriptions to railroads, and 2d, A five per cent. limitation to municipal indebtedness.

The question of municipal subscription was easily disposed of; the right of municipalities to subscribe to railroad stock was denied without a yea and nay vote. The argument advanced by the champions of the measure was that the voting of a subscription to a railroad, was the voting by A of a tax upon B for the benefit of C.

Their opponents refuted "such alphabetical nonsense" with the unanswerable argument that in this state the majority rule, and vote taxes upon themselves.

The section as adopted, provided that "no county, city, town, township or other municipality, shall ever become subscriber to the capital stock of any railroad or private corporation, or make donation to, or loan its credit in aid of such corporation; provided, however, that the adoption of this article shall not be construed as affecting the right of any such municipality to make such subscriptions where the same have been authorized, under existing laws, by a vote of the people of such municipalities prior to such adoption."

1. Chicago Tribune.
2. Illinois State Register.
The question of limitation to the extent of municipal indebtedness to five per cent. of her assessed valuation, caused much discussion and argument. The proposition was finally agreed to. All counties that had all the railroad needed were heartily in favor.

I. Although the law required the assessment of all property at full value, it was listed much lower in 1870. The establishment of a board of equalization in 1867 (Laws 1867, 105), and the abolition of the two mill tax were expected to raise the assessed valuation to approximately full value. The advocates of the five per cent. limitation provision expected full valuation and thought that their limitation would aid in sustaining it, although by many a five per cent. limitation on half value was considered sufficiently liberal. At that time property was assessed at about one-fifth of its actual cash value, and in the average locality has remained so ever since. In some localities, however, the temptation to avoid high state taxes has been so great that it has fallen far below this. In some parts of Cook county the assessed valuation descended as low as one-fiftieth of full value (Marvin A. Farr); while evading the payment of state taxes, the city of Chicago has been able to assume a large debt by multiplying the number of municipal corporations within her borders (there are about seven or six different municipal corporations in the city of Chicago). Most counties being unable to avail themselves of sanitary districts and numerous park commissions are compelled to maintain a higher assessed valuation. The framers of the new revenue act, apparently acted
of the proposition, while the many southern counties that had not yet obtained a requisite number of railroads were against it. Representatives of counties negotiating the building of railroads by a desire to maintain the status quo, provided for the assessment of property at one-fifth of its full cash value. As in this full value is ascertained (by personal correspondence) to be about eighty per cent., the assessed valuation, therefore, upon which indebtedness is limited to five per cent. has been reduced from one hundred per cent. to sixteen per cent. The increase in the assessed valuation in Cook county (110 per cent.) shows the former assessed valuation to have been 21/2 per cent., while difficulty is anticipated in one county (Calhoun) because property is assessed at only one-fifth of full value.

Despite the great lack of uniformity, the five per cent. limitation, although in actual practice it has proved vastly greater than was intended, has caused no great inconvenience, because of the necessity in rural counties of a higher assessed valuation, and in Chicago on account of the more highly differentiated system of administration.

An interesting instance of the change of public opinion on the question of municipal indebtedness is revealed by comparing the excitement amid which the proposition to limit it to five per cent. of cash value, was discussed in 1870, with the utter lack of comment on the action of the legislature in practically prohibiting it in 1898, (1) per cent. is now the maximum, but by Sec. 49 of the
Vote on the 5½ limitation to municipal indebtedness in the convention of 1870.

black, against  red, divided  green, absent or not voting.

opposite 59

white, for
signified their willingness to vote for the proposition, saying that they were heartily in favor of it if it would not operate to prohibit their particular case. As a majority of the counties had a sufficient number of railroads, it was decided that the others should go without. For the geographical distribution of the vote see map.

The section provided that no county, city, township, school district, or other municipality, shall be allowed to become indebted in any manner or for any purpose to an amount including existing indebtedness, in the aggregate, exceeding five per centum on the value of the taxable property therein, to be ascertained, by the last assessment for state and county taxes, previous to the incurring of such indebtedness. Any county, city, school district, or other municipal corporation, incurring any indebtedness, as aforesaid, shall before or at the time of doing so, provide for the collection of a direct annual tax sufficient to pay the interest on such debt as it falls due, and also to pay and discharge the principal thereof within twenty years from the time of contracting the same. This section shall not be construed to prevent any

revenue act of 1898, municipalities in counties of 125,000 inhabitants were allowed an indebtedness of only two and one-half per cent., declared unconstitutional in 183 Ill., which would allow only one-half of one per cent. of actual value.
county, city, township, school district or other municipal corporation from issuing their bonds in compliance with any vote of the people which may have been had prior to the adoption of this constitution in pursuance of any law providing therefor.

On the question of township organization, both a majority and a minority report were offered. The majority report was substantially the same as the article referring to the same subject in the constitution of 1848, but a provision was introduced in respect to the county board of supervisors which would have made the supervisors constitutional officers. Each town should have at least one representative; another section was added providing for uniformity of fees and days of holding township meetings. Supervisors were not mentioned in the old constitution; it was deemed proper that there should be a recognition of that part of the governmental machinery in the new constitution. The question of representation upon the county board was presented to the committee in various forms, and it was found that there were so many local interests to be consulted, so many conflicting opinions, that it was preferred to leave it for the legislature to arrange, simply requiring that all laws passed in reference to representation on the county board of supervisors shall be uniform throughout the state.

By the minority report in addition to what is contained in the majority report, the following section was submitted: Whenever two-thirds of the members elected in each branch of the general assembly shall concur in a provision to that effect, all counties

I. Debates of the Constitutional Convention of 1870, 674.
in the state shall be placed under township organization. Some other rather legislative features were contained.

The question of the abandonment of the system was discussed. Up to 1870 no county had abandoned the system after once adopting it. There was a great deal of uncertainty as to the method to be pursued in doing so. The old law's provision had been declared unconstitutional, and the supreme court had prescribed a way. The uncertainty in this regard was set at rest by a section providing the same method as was prescribed by the court.

Another consideration was equal representation of towns on the board. Under the old law great abuses had arisen from the unequal representation. The provision for assistant supervisors was not satisfactory; there was no uniformity throughout the state; special laws were made for every case; in some places the basis of representation was different from that in others, and some towns were by special laws, set entirely outside of townships.

Finally all details were left to the general assembly, and no officers were mentioned in the section.

The pronounced manner in which the constitution proposed in 1861 had been voted down, led the convention to avoid staking the fate of the whole constitution with that of certain clauses unpopular in different sections of the state. The hostility of the south towards the clause prohibiting municipal subscriptions to railroads

I. Article 10, section 5.
2. Macomb and Galesburg for instance.
Counties voting against proposition in regard to municipal subscription to railroad stock, on vote for adoption of constitution, 1870.

opposite 62
was the cause of that clause being submitted separately to the people, yet with two exceptions those counties voting against the municipal subscription clause also voted against the constitution. See map.

I. Montgomery and Wabash.
CHAPTER VII.
PRESIDENT ORGANIZATION AND POWERS.

The act under which counties are now organized was approved and in force March 4, 1874. It differs in few particulars from the act of 1861.

Provision is made for the organization of cities not in towns, into separate towns, and for the first election of county commissioners, where counties go back to the old system, disposition of the town records, etc. A minimum area of seventeen sq. mi. is prescribed for a town and a majority of the electors is made necessary to divide a town. Supervisors in Cook county are declared not to be members of the county board.

The act of 1874 has been amended many times but the amendments are mostly of little interest in this discussion. In 1877 cities of over 3000 inhabitants were allowed to be organized into separate towns by the county boards upon request of the city council. The town clerk was made clerk of the board of town auditors in 1879. In 1885 the territorial minimum for area of a town was lowered to ten sq. mi.

Having concluded the discussion of the legal provisions, we shall investigate the practical workings of the system as administered at present.

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1. R.S. Ill. 1874, 1065.
2. Laws 1875, III; 1877, 212; 1877, 213; 1879, 316; 1883, 174; 1885, 249; 251; 1887, 299, 300; 1889, 359, 561; 1893 (Bradwell) 130, amended in Laws 1893, 317, 318, 319; 1899, 362, 363.
When the people of a county have voted to adopt the township system, three commissioners appointed by the county board, proceed to divide the county into towns, making them conform with the congressional or school townships, except in unusual cases.

Every town has corporate capacity to sue and be sued. In all such cases or proceedings the town shall sue and be sued by its name, except where town officers shall be authorized by law to sue in their name of office for the benefit of the town. To acquire and hold property for the use of its inhabitants and to sell and to convey the same; to make all such contracts as are necessary in the exercise of the powers of the town.

I. Duty to appoint them may be enforced by mandamus against the county board. People v. Ruyle, 91 Ill. 525.
2. Town under township law is not incorporated town. Town of Woc-Sung v. People, 102 Ill. 646.
3. The corporate authority is in the electors alone and in no board or officer. Kankakee v. K. & I.E.R.R. Co., 115 Ill. 86.

Town prosecuting suit to execution is liable for levy on goods of a stranger. Wolf v. Boettcher, 64 Ill. 316.
Town may sue treasurer of commissioners of highways who refuses to pay over balance in his hands to his successor, although suit may also be brought on his official bond. Blanchard v. LaSalle, 99 Ill. 278.

5. Laws 1861, 218. Town can exercise only such powers as are conferred upon it by statute. Drake v. Phillips, 40 Ill. 388.
The annual town meeting is held on the first Tuesday in April, for the election of town officers and the transaction of miscellaneous business. The electors present at the annual town meeting shall have power—

1st. To make all orders for the sale, conveyance, regulation or use of its corporate property that may be deemed conducive to the interests of the inhabitants.

2d. To make all necessary measures and give directions for the exercise of their corporate powers.

3d. To direct the raising of money by taxation for the following purposes: 1st. For constructing or repairing roads, bridges, or causeways, within the town to the extent allowed by law. 2d. For the prosecution or defense of suits by or against the town, or in which it is interested. 3d. For any other purpose required by law. 4th. For the purpose of building or repairing bridges or causeways in any other town in the same county or in another county, provided that notice is given by posting notices describing the location of the bridge or causeway, and the probable amount required therefor, in at least three public places at least ten days before the meeting in the town in which the taxes are proposed to be levied.

4th. To provide for the institution defense or disposition of suits at law or in equity, in all controversies between the town and any other town, or any individual or corporation, in which the town is interested.

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I. Where there is a failure to elect, the old officers will hold until an election can be ordered. People v. Callaghan, 83 Ill. It
5th. To prevent the introduction, growing or dissemination of Canada thistles or noxious weeds, and to allow rewards for their destruction and to raise money therefor.

6th. To offer remuneration and to take such action as shall induce the planting and cultivation of trees along the highways in such towns, and to protect and preserve trees standing along or on highways.

7th. To make rules and regulations for ascertaining the sufficiency of all fences in such town, and to determine what shall be a lawful fence within the town, except as otherwise provided by law.

8th. To restrain, regulate and prohibit the running at large of cattle, etc.

9th. To establish and maintain pounds.

10th. To determine the number of pound masters; to prescribe their duties and to elect them.

11th. To authorize the distraining, impounding and sale of cattle, etc., for penalties incurred, and costs of the proceeding.

12th. To construct and keep in repair public wells and watering places, and enact by-laws, rules and regulations to carry their powers into effect; impose fines and penalties, and apply such fines in any manner conducive to the interests of the town.

The town officers are a supervisor, who is ex officio, overseer of the poor, a clerk, an assessor, and a collector, all of

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1. Vote directing donation does not authorize issue of bonds to pay such donation. Schaeffer v. Bonham, 95 Ill. 365.

2. Supervisor cannot recover from county for services rendered in
thorn are chosen annually, three commissioners of highways elected for three years, one retiring every year, two justices of the peace and two constables who hold for four years.

On the morning appointed for the town meeting the voters assemble, and proceed to choose a moderator, who presides for the day. Balloting for town officers at once begins, the supervisor, assessor and collector acting as election judges. Every male citizen of the United States, who is twenty-one years old; who has resided in the state a year, in the county ninety days, and in the township thirty days, is entitled to vote at town meeting; but a year's residence in the town is required for eligibility to office. At two o'clock the moderator calls the meeting to order for the consideration of business pertaining to those subjects already enumerated.

his ex officio capacity of overseer of the poor, services which by law he is required to perform, but for which the law provides no compensation. Madison Co. v. Bruner, 13 Ill. App. 599; affirmed Ill Ill. II. Where the town is wholly responsible for the support of a pauper, the supervisor is acting for the town and not for the county and is entitled to his per diem compensation from the town as for town business. Bruner v. Madison Co., Ill Ill. II.

I. Before qualification of successor, resignation does not relieve supervisor or town clerk from duties of his office. United States v. Daeger, 6 Biss. 308; Daeger v. United States, C. C. 93 U. S. 599.
Everything is done by the usual rules and methods of parliamentary bodies. The clerk of the town is secretary of the meeting, and preserves a record of all the proceedings. Special town meetings may be held whenever the supervisor, clerk, or justices, or any two of them, together with fifteen voters, shall have filed with the clerk a statement that a meeting is necessary, for objects which they specify. The clerk then gives public notice in the same way as for regular meetings; such special meetings act only upon the subjects named in the call.

The supervisor is both a town and a county officer. He is general manager of the town business, and is also a member of the county board, which is composed of the supervisors of the several towns, and which has general control of the county business. As a town officer he receives and pays out all town money excepting the highway and school funds. He prosecutes for all penalties given by law to such town, and for which no other officer is specially directed to prosecute.

The town clerk is custodian of town records, books and papers, clerk of the town meeting, and certifies annually to the county clerk the amount of taxes required to be raised for all town purposes.

1. Is the town chief executive officer. People v. Cline, 63 Ill. 394.
2. Bruner v. Madison County, Ill Ill. II.
3. And may hire an attorney for that purpose. People v. Cline,
The highway commissioners, in the oversight of roads and bridges, are controlled by the enactments of the town meetings and by a large number of statutes. Highways are maintained by taxes on real and personal property, and by a poll tax of from one to two dollars from every able-bodied man between the ages of twenty-one and fifty. The poll tax may be abolished by the legal voters of the town. One of the commissioners is constituted treasurer, and he receives and pays out all road moneys.

The supervisor is ex officio, overseer of the poor. The people of each county determine whether the separate towns or the county at large shall take care of the paupers. When the town has the matter in charge, the overseer generally provides for the indigent by a system of outdoor relief; if the county supports the poor, the county board is authorized to establish a poorhouse and farm for the permanent care of the destitute, and temporary relief is afforded by the overseers in their respective towns at the county's expense.

The board of town auditors consists of the supervisor, town clerk and justices of the peace. They examine all accounts of the supervisor, overseer of the poor and highway commissioners; pass upon all claims and charges against the town, and audit all bills.

63 Ill. 394. A contract made by the supervisor under vote giving (Ill. 65) him power to employ counsel will bind town, St. Vernon v. Patton, 94 I. Laws 1695, 310.

$ Claim against town for expenses of litigating the removal of
for compensation resented by town officers. The accounts thus audited are kept on file by the clerk for public inspection, and are reported at the next town meeting. The town clerk acts as clerk of the board, and the board meets semi-annually on the Tuesday next preceding the annual meeting of the county board, and on the Tuesday next preceding the annual town meeting.

The supervisor, assessor and town clerk constitute the board of health. Their transactions are reported by the clerk to the town meeting. The board possesses the usual quarantine powers to guard the town against the spread of disease.

the county seat, valid. Ellis v. Bircher, 4 Ill. App. 361. Town auditors may be compelled by mandamus to audit judgment against the town. Lower v. United States, 91 U.S. 535. Members of auditing board cannot relieve themselves of duty to levy tax and pay judgment against town by resigning; until their successors qualify, they may be compelled to act. United States v. Badger, 6 Biss. 308.
CHAPTER VIII.
CRITICISMS AND SUGGESTIONS.

While the county court consisting of three members, is a smaller and therefore as a rule more manageable or controllable body by outside influence, there is little doubt that a board of supervisors is not only directly more expensive, but also more thousand and one petty claims of every conceivable character, having often no foundation in law or justice are constantly presented not being loosely investigated and tacitly allowed, aggregating no insignificant sum. A board of supervisors also acts or is controlled more by partisan feelings. There is an almost entire lack of individual responsibility and less able men are chosen than in the old system where the whole responsibility resting on three men, is more likely to be felt. Business is transacted by three commissioners with greater dispatch, there are no committee meetings, useless speeches, roll calls, etc., while a central government is obtained over county matters.

While the institution of the town meeting has been praised by many illustrious foreigners who have diligently studied the theory, it is very probable that the institution could be abolished in towns of considerable size. The old New England town meeting in its primeval purity is there extremely rare. The participants were men of learning and intelligence with no mercenary interests, but when the town had come to exceed seven or eight hundred persons, where the element of farmers has been replaced by factory operatives,

I. Davidson & Stuve, 557.
and still more when any considerable part are strangers such as the Irish or French Canadians who have poured into New England, the institution works less perfectly, because the multitude is too large for debate, factions are likely to spring up, and the new immigrants untrained for self-government, become the prey of wise pullers or petty demagogues. Where a town has increased in population sufficiently to be incorporated as a city, the chief evil of the town meeting is encountered. The city has its mayor, aldermen, etc., while the town has its officers. The whole area of the town may not be incorporated in the city, but practically it is so dwarfed by the city as to attract little attention. It becomes then nothing but a theory.

Speaking of the city and town of New Haven, Connecticut, where the above conditions existed, it is said: "This venerable institution (the town meeting) appears today in the guise of a gathering of a few citizens, who do the work of as many thousands. The few individuals who are or have been interested in the government of the town, meet together, talk over matters in a friendly way, decide what the rate of taxation for the coming year shall be and

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I. Brice, American Commonwealth, I, 595.


3. The theory of a town meeting in the words of the supreme court, C. & I. R. R. Co. v. Mallory, 101 ILL. 583, is "that the corporate body of the town is present for the purposes of transacting, and competent to transact, all the corporate business of the town
adjourn. Not one-seventieth part of the citizens of the town have attended an annual town meeting; they hardly know when it is held. The newspaper give its transactions a scant notice, which some of their subscribers probably read.

The actual governing force of the town is therefore an oligarchy in the bosom of a slumbering democracy, but the town is well governed. Its government carries too little spoil to attract those unreliable politicians who infest the city council. If the ruling junto should venture on too lavish a use of the town's money, an irresistible check would appear at once. Any twenty citizens could force the selectmen to summon the town together, and the apparent oligarchy would doubtless go down before the awakening people. Boston discarded the town meeting when her voters numbered only seven thousand, because the great mass of the voters took no interest in it. In Chicago the state of affairs is even worse. The town meetings held within the several townships within the city limits are a caricature upon self government. Most of the voters of the city have never heard of their town meeting; much less ever attended one. Only those interested in their salaries as employees of the town are ordinarily found in attendance. The supervisor or some one interested calls a few friends together at the appointed time and place, of which practically the public has no notice, and if by chance a disinterested citizen is present, he finds that the business is transacted, and the meeting is over possibly with-

not specially delegated to certain individual officers."
out in having heard the proceedings or had any part therein. Yet in these town meetings, it is probable that not less than half a million of dollars of public money is raised and disbursed annually in the city of Chicago.

The board of supervisors is usually too large; it is entirely unnecessary for each township in a county to have one representative, but where a city town has several assistant supervisors it is worse yet. The number of supervisors should be greatly reduced and better salaries paid. The poor should be cared for by the county and not by the supervisor. Highway commissioners should be appointed by the county board, and the practice of paying tax in labor should be discontinued as too expensive. The grade of justice of the peace should be raised, and he should be compelled to qualify. Office of supervisor of highways should be abolished, all officers should be elected for two years, and their duties stated more clearly.

Thus while retaining the local self government part of the township organization system, something of the efficacy and economy of the county system would be enjoyed.
APPENDIX A.

Dates of the adoption by the different counties of the Township Organization system.

Adams November 6, 1849.

Alexander

Bond November 6, 1888.
Boone November 6, 1849.
Brown Nov. 6, 1849 but did not organize; Nov. 3, 1853.
Bureau November 6, 1849.

Calhoun

Carroll November 6, 1849.

Cass

Champaign November, 1859.
Christian November, 1865.
Clark November 7, 1854.
Clay November, 1860.
Clinton 1873.
Coles 1858.
Cook November 6, 1849.
Crawford November, 1867.
Cumberland November, 1860.
DeKalb November 6, 1849.
DeWitt November, 1858.
Douglas November 1867.
DuPage November 6, 1849.

# Not under Township Organization.
Edgar
November 3, 1856.

#Edward

Effingham
November, 1860.

Fayette
November, 1859.

Ford
November, 1860.

Franklin
1871; Ab. 1874; Read. 1875; Ab. 1879; Read. 1884.

Fulton
November 6, 1849.

Gallatin
November, 1890.

Greene
November 4, 1884.

Grundy
November 6, 1849.

Hamilton
November 3, 1885.

Hancock
November 6, 1849.

#Hardin

#Henderson

Henry
November 4, 1856.

Iroquois
November 6, 1855.

Jackson
Nov., 8, 1870; Ab. Nov. 3, 1874; Read. Nov., 6, 1877; Read, Nov. 7, 1882; Read.Nov., 4, 1884.

Jasper
November 6, 1849.

Jefferson
November, 1859.

Jersey
November 1878.

JoDaviess
November 2, 1852.

#Johnson
Nov. 1872; Ab. November, 1878.

Kane
November 6, 1849.

Kankakee
November 2, 1852.

Kendall
November 6, 1849.
Knox
November 2, 1852.

Lake
November 5, 1849.

LaSalle
November 6, 1849.

Lawrence
November 4, 1856.

Lee
November 5, 1849.

Livingston
November 3, 1857.

Logan
November, 1865.

Macon
November 8, 1859.

Macoupin
November 9, 1870.

Madison
November, 1875.

Marion
November 1872.

Marshall
November 6, 1849.

Mason
November 1861.

Massac

McDonough
November 4, 1856.

McHenry
November 6, 1849.

McLean
November 5, 1857.

Menard

Mercer
November 8, 1853.

Monroe

Montgomery
November, 1872.

Morgan

Moultrie
November, 1866.

Ogle
November 6, 1849.

Peoria
November 6, 1849.

Perry
Piatt  November, 1889.
Pike       November 6, 1849.
#Pope
#Pulaski
Putnam     November 6, 1855.
#Randolph
Richland   November 1858.
Rock Island November 4, 1856.
Saline     November 5, 1889.
Sangamon   November, 1860.
Schuyler   November 8, 1853.
#Scott
Shelby     November, 1859.
Stark      November 2, 1862.
St Clair   November 5, 1863.
Stephenson November 6, 1849.
Tazewell   November 6, 1849.
#Union
Vermilion  November 5, 1850.
#Wabash
Warren     November 3, 1853.
Washington Nov. 1882; Ab. Nov. 1884; Read. Nov. 5, 1888.
Wayne      November, 1859.
White      November, 1876.
Whiteside  November 4, 1851.
Will       November 6, 1849.
APPENDIX B.

THE EVOLUTION OF THE NEW YORK SYSTEM.

After the English conquest of New Netherland in 1664, a body of laws was promulgated by Col. Nicholls, deputy governor for the duke, primarily for the government of Long Island, but subsequently enforced with some modifications in other parts of the territory claimed by the duke of York. By this code was established a system of local government similar in spirit to that existing in New England and the mother country, but possessing some remarkably novel features.

The governing body of the town consisted of the constable and eight overseers, subsequently decreased to four (Duke's Laws, 69). Four of the latter were elected every year by a "majority of the votes of the freeholders," and the constable was chosen in the same way from among the retiring overseers. In case of emergency or when the constable was not at hand, any overseer could "take upon

I. Taken from Howard's Local Constitutional History, volume I.
him the authority of a constable, provided that he carry with him the staff of the office." (Luke's Laws, 44.) The constable and overseers possessed both judicial and legislative powers. As constituting the "town-court", they could try actions for debt or trespass not involving more than five pounds; or if above this amount, they could submit them to arbitration.

It was also enacted that "whereas in particular townes many things do arise, which concerne onely themselves, and the well ordering their affairs, as the disposing, planting, building, and the like, of their owne lands and woods, granting of lots, election of officers, assessing of rates with many other matters of a prudential nature, ending to the peace and good government of the respective townes, the constable by and with the consent of five at least of the overseers for the time being, have power to ordaine such or so many peculier constitutions as are necessary to the welfare and improvement of their townes; provided they be not of a crimminall nature, and that the penalties exceed not twenty shillings for one offence, and that they be not repugnant to the publique lawes," such "constitutions" being subject to the approval of the court of sessions or the assizes. There was a town meeting whose functions seem to have consisted simply in the election of officers, though they are not clearly defined, (Luke's Laws, 51), and thus the right to enact by-laws, which in the New England towns was exercised by the selectmen coordinately with, but under the authority of the court of sessions or the assizes.

of the town meeting, was by the duke's code vested in the first instance exclusively in the representative board. The constable's position was unique. It is especially noteworthy that while performing the fiscal and police functions incident to the office elsewhere he was here recognized more clearly than anywhere else in the colonies as the head officer and most distinguished personage of the community.

The duke's code remained in force until some time after the establishment of the royal government, probably until 1691. There was no interruption in the continuity of local institutions; on the contrary immediately after the revolutionary period, the existing charters, patents, and privileges of all cities, manors and towns were expressly confirmed; and from these beginnings was ultimately developed the admirable system of local government which New York still possesses.

By a statute of 1691 it was enacted that, since the respective towns within the province "have distinct ways in their improvements of tillage and pasturage," the freeholders of each should be authorized to hold meetings for the framing of "prudential orders and rules" relating to these matters. At the same time it was provided that three supervisors of fences and highways should be elected in each town.

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1. Duke's Laws, 21-2, 3, 4, 5, 9, 10, 15, 45, 69.
On the nineteenth day of June, 1703, a law was passed which marks an important epoch in the history of English institutions; for by it was created the essential feature of that system of representative township-county government which now constitutes the highest type of local organization in the United States: a vigorous town government possessing all necessary means of self help, cooperating with, and in some measure depending upon, a strong county administration.

The act provided that each town should annually elect from the freeholders therein two assessors, one collector, and a supervisor, and the latter is significantly described as one "to compute, ascertain, examine, oversee, and allow the contingent, publick, and necessary charges of each county"—the function which everywhere still constitutes the chief business of the county board.

The supervisors were required to hold annual and special meetings at the county town for the discharge of their fiscal duties; but in their respective townships they had few independent functions to perform, except that each, with the collector and assessors, was responsible for the collection of the quit rents for which the inhabitants were liable.

The town meeting as we have seen, is a folk-meet with limited legislative powers; and it is authorized to levy taxes for the construction of roads and public buildings. The township officers

1: Van Schaack, Laws of N. Y. 1, 56.
2. Ibid. I, 36, 291.
were all elected by the freetholders and were nearly the same as are still chosen in town meetings throughout the west. Besides the supervisor, assessors, collectors, surveyors of highways, and fence viewers, already mentioned; there were also a clerk, overseers of the poor, constables, pound masters, and officers to look after the estates of persons dying intestate. But several of these functionaries are not instituted for all towns or other districts by general law. The provincial legislation of New York is peculiar in this regard that, in every branch of local administration, special statutes for particular places are enacted, so that it is sometimes nearly impossible to say whether a given office or function exists in all cases. Such was still the general character of township organization in 1777; and the state constitution of that year provides that all town officers hitherto chosen by the people, "shall always continue to be so eligible, in the manner directed by the present or future acts of the legislature.

I. Poore, Charters, IX, 1337.
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