§ 184 (125). **Only one Corporation of Same Kind in Same Area.** — There *cannot be*, at the same time, *within the same territory, two distinct municipal corporations*, exercising the *same* powers, jurisdictions, and privileges.[1]

11 Ohio St. 96 (1860); *post*, sec. 185, note. In *Arkansas* the determination of what the boundaries are is within the power of the courts. Little Rock *v.* Parish, 36 Ark. 166.

[1] Willc. on Corp. 27; Patterson *v.* Society, &c., 4 Zabr. (24 N. J. L.) 385, 399, *per Green*, C. J. (1854); Rex *v.* Passmore, 3 Term R. 243; Rex *v.* Amery, 2 Bro. P. C. 336; Grant on Corp. 18. "This," says *Osborn*, J., "is a self-evident proposition." Taylor *v.* Fort Wayne, 47 Ind. 281 (1874); Strosser *v.* Fort Wayne, 100 Ind. 443; Drain Commissioner *v.* Baxter, 57 Mich. 127.

The city of Chicago adopted an ordinance prohibiting any person, company, or corporation within the city, or *within a mile of the city limits, from engaging in the business of slaughtering animals* for food, or packing them for market, or rendering the offal, bones, &c., of any dead animal matter, &c., . . . until they shall have obtained a license therefor. The defendant was a corporation, organized under the laws of the State, and when the suit was instituted against the company it was carrying on the kind of business mentioned in the ordinance. Its factory was in Cook County, *outside of the city limits, and within the town of Lake*, in that county, and it had then a license from the town of Lake to carry on the kind of business it was engaged in, but had no license from the city of Chicago. It was urged that the city of Chicago had no power to pass or enforce the ordinance. *Walker*, J., who delivered the opinion, after a careful discussion of the questions, viz.: 1. Whether the General Assembly had granted the power to the city of Chicago to pass an ordinance of such a character; 2. Whether the power was also granted to exercise police restraint outside of the city limits, and within another municipality, says: "We must conclude that the General Assembly, rather than subject one large city to such hazards from smaller municipalities in their immediate vicinity, would have repealed the charter of the latter, or at least curtailed their power. What in the open and thinly settled country would not be obnoxious as a nuisance, would in the heart of a city be a terrible nuisance. Persons then desiring to engage in particular avocations in or near to cities, must submit to have their pursuits limited and contracted. Whilst trade, manufactures, and commerce have large claims on the laws for protection, theirs is not the only, nor have they the highest claims. . . . To accomplish this purpose (protect health and lives), the power was conferred by the legislature upon cities and villages to regulate these establishments for the distance of one mile beyond their corporate limits, even if that should lap over and embrace a portion of territory embraced in the boundaries of another municipality." Chicago Packing Co. *v.* Chicago, 88 Ill. 221 (1879). Where the boundary line of a corporation was vague and indefinite, the *practical interpretation* which had been given to the statute by the citizens of the disputed district in exercising municipal privileges, such as voting, &c., was adopted by the court. Milne *v.* Mayor, &c., 13 La. 69 (1838). See, also, Hamilton *v.* McNeil, 13 Gratt. (Va.) 389 (1856); *post*, sec. 420 note. Where the *middle of a road is the dividing line* between two towns, each is bound for defects within its own limits. They cannot be jointly indicted for a defect within the jurisdiction of one. In this case the defect was in a bridge forming part of the road. State *v.* Thomaston and Rockland, 74 Me. 198. Boundaries may be *defined by long use*, confirmed by a legislative recognition. People *v.* Farnham, 35 Ill. 562. If a *dwelling-house is divided by the boundary line* between two towns, that portion of the house which the occupant mainly and substantially makes his home (as by sleeping, eating, &c.) fixes his residence, and he cannot elect to reside and be taxed in the other town. Chenery *v.* Waltham, 8 Cush. 327.

§ 185 (126). **Enlargement of Boundaries.** — Not only may the legislature originally fix the limits of the corporation, but *it may, unless specially restrained in the Constitution, subsequently annex*, or authorize the annexation of, contiguous or other territory, and this without the consent, and even against the remonstrance, of the majority of the persons residing in the corporation or on the annexed territory. And it is no constitutional objection to the exercise of *this power of compulsory annexation* that the property thus brought within the corporate limits will be subject to taxation to discharge a pre-existing municipal indebtedness, since this is a matter which, in the absence of special constitutional restriction, belongs wholly to the legislature to determine.[1]

In *Indiana* the qualified voters of a city within the limits of a township are held to be voters of the township for the purpose of a township tax in aid of a railroad, and their property taxable within the township for that purpose. Scott *v.* Hausheer, 94 Ind. 1.

[1] Blanchard *v.* Bissell, 11 Ohio St. 96 (1860), defining *contiguity* and construing statute authorizing county commissioners to annex; following and approving Powers *v.* Wood County, 8 Ohio St. 285 (1858). *Ante*, sec. 63 and cases. See also Laramie County *v.* Albany County, 92 U. S. 307 (1875); Queen *v.* Local Governing Board, L. R. 8 Q. B. 227; Woods *v.* Henry, 55 Mo. 560; Giboney *v.* Girardeau, 58 Mo. 141; State *v.* McReynolds, 61 Mo. 203 (1875); Layton *v.* New Orleans, 12 La. An. 515 (1857); Arnoult *v.* New Orleans, 11 La. An. 54; Cheany *v.* Hooser, 9 B. Mon. 330; Gorham *v.* Springfield, 21 Me. 59; Morford *v.* Unger, 8 Iowa, 82 (1859); St. Louis *v.* Russell, 9 Mo. 507 (1845); St. Louis *v.* Allen, 13 Mo. 400 (1850); Smith *v.* McCarthy, 56 Pa. St. 359; Chandler *v.* Boston, 112 Mass. 200 (1873); Railroad Co. *v.* Spearman, 12 Iowa, 112; Wade *v.* Richmond, 18 Gratt. (Va.) 583 (1868); Norris *v.* Mayor, &c., 1 Swan (Tenn.), 164; Elston *v.* Crawfordsville, 20 Ind. 272; Edmunds *v.* Gookins, *Ib.* 477; Girard *v.* Philadelphia, 7 Wall. 1 (1868); Covington *v.* East St. Louis, 78 Ill. 548; Graham *v.* Greenville, 67 Tex. 62 (citing text); Board, &c. of Chickasaw Co. *v.* Board, &c. of Sumner Co., 58 Miss. 619; Washburn *v.* Oshkosh, 60 Wis. 453. "It would require," says *Swan*, J., in Powers *v.* Wood County, 8 Ohio St. 285, 290, "a very artificial and unsound mode of reasoning to hold that territory could not be annexed to a town which owed debts, until the owners of such territory were paid a compensation in money for a proportional part of such debts, on the ground that the property annexed was condemned for public use. It is not to be presumed that a municipal corporation has contracted a debt without being correspondingly benefited." The doctrine of the text approved. United States *v.* Memphis, 97 U. S. 284 (1877); noted, *ante*, sec. 63. In *Michigan* there are *constitutional limitations* on the right of the legislature to change, except as provided in the Constitution, municipal boundaries so far as to interfere with *representative districts*. Attorney-General *v.* Bradley, 36 Mich. 447 (1877); Attorney-General *v.* Holihan, 29 Mich. 116.

The tenacity with which the people of New England cling to the popular or *town* form of government has been before noticed (*ante*, secs. 28, 29); and the Constitution of *Massachusetts* in the second amendment, accepted in 1821, contains the provision that the legislature "shall have full power and authority to *erect and constitute* municipal or city governments, in any corporate town or towns in this commonwealth, . . . *provided*, that no such government shall be erected or constituted in any town not containing 12,000 inhabitants, nor unless it be with the consent and on the application of a majority of the inhabitants of such town present

§ 186. **Property and debts on Legislative Extinction.** — Where *no constitutional restriction exists, the corporate existence and powers* of

and voting thereon at a meeting duly warned and holden for that purpose." The legislature, without any application by a majority of the inhabitants of the *town* of Brookline, which contained a population of about 6,500, annexed it to the city of Boston, the act to take effect if accepted by a majority of voters voting at meetings to be held for that purpose. In the case of Chandler *v.* Boston, 112 Mass. 200 (1873), the question was presented whether an entire *town* with less than 12,000 inhabitants can be annexed to a city, and also whether a *previous application* of a majority of the inhabitants of the town is not essential to the *erection* or *constitution* of a city government therein or over the inhabitants thereof. The validity of the act providing for such annexation was sustained. See opinion of Justices, 6 Cush. 580; Warren *v.* Charlestown, 2 Gray, 104, as to general power of the legislature to change the boundaries of towns and cities. *Owners of property* in a territory *proposed to be annexed* have such an interest in the matter of annexation as will entitle them to resort to the courts to question the validity of an election to determine it. Morris *v.* Nashville, 6 Lea (Tenn.), 337.

It is held in *Pennsylvania* that under the terms of the act of the legislature authorizing the incorporation of villages, the boundaries cannot be extended so as to include *a large body of farm lands;* but the district to be incorporated should be restricted by the courts in which the proceeding is had, so as to include no more than the village itself and its proper territory. Borough of Little Meadows, 35 Pa. St. 335 (1860); Devore's Appeal, 56 Pa. St. 163; Blooming Valley, 56 Pa. St. 66. These cases commented on by *Campbell*, J. People *v.* Bennett, 29 Mich. 451 (1874); s. c. 18 Am. Rep. 107. As to *taxation*, for general municipal purposes, of *rural property within corporate limits*, and the restrictions on the right, see chapter on Taxation, *post*, secs. 794, 795.

In *Indiana*, under act of June 18, 1852, *lots adjoining a city*, which are laid off, platted, and recorded, may be included within the city limits by resolution of the common council. Contiguous territory not thus laid off, &c., can only be annexed by petition to the board of *county* commissioners. Jeffersonville *v.* Weems, 5 Ind. (Porter) 547 (1854). Annexed tracts, under this act, *need not all be contiguous to the city;* if they are contiguous to each other and one is contiguous to the city, it is sufficient. Huff *v.* Lafayette, 108 Ind. 14. One or more citizens of the territory sought to be annexed may maintain injunction to prevent an illegal annexation (Delphi *v.* Startzman, 104 Ind. 343), but he is *estopped* from objecting if he delays taking action when he knows the city is spending large sums of money upon the annexed district, even though its proceedings are void by reason of mistake of fact by its officers. Strosser *v.* Fort Wayne, 100 Ind. 443. See also as to *laches*, Logansport *v.* La Rose, 99 Ind. 117. Where there is *jurisdiction* in the annexation proceedings, irregularities and errors will not render them void so that they may be attacked in collateral proceedings. Terre Haute *v.* Beach, 96 Ind. 143; s. p. Cicero *v.* Williamson, 91 Ind. 541. An individual cannot question the right of the corporation to exercise the functions, powers, and authority of an incorporated city. This can only be done by *quo warranto* in behalf of the State. Mullikin *v.* Bloomington, 72 Ind. 161, (application for injunction to restrain collection of taxes on the ground that the corporate existence was unlawfully changed from that of a town to that of a city, refused). Construction of existing laws on subject of annexation of Platte Territory. Taylor *v.* Fort Wayne, 47 Ind. 274 (1874).

Effect of extension of corporate limits on *homestead right*, where different provisions are made for country and town homesteads. Taylor *v.* Boulware, 17 Tex. 74; Finley *v.* Dietrick, 12 Iowa, 516; Truax *v.* Pool, 46 Iowa, 256.

Ordinances or contracts designed to operate throughout the city at large, extend to and *operate within subsequent enlarged municipal limits.* St. Louis Gas Co. *v.* St. Louis, 46 Mo. 121 (1870).

counties, cities, and towns are subject to legislative control. Where a municipal or public corporation is *legislated out of existence and its territory annexed to other corporations*, the latter, unless the legislature otherwise provides, are *entitled to its property*, and severally liable for a proportionate share of its then subsisting legal debts, and vested with the power to raise revenue wherewith to pay them by levying taxes upon the property transferred and the persons residing therein. The creditors of the extinguished corporation were held in the case cited in the note to have a remedy *in equity* against the corporations succeeding to its property and powers, to have the amount ascertained, apportioned, and adjudged to be paid.[1]

§ 187 (127). **Property and debts on Division of Town.** — In connection with the power of the legislature to create municipal corporations and to determine their territorial extent, reference may be made to the *division of towns or public corporations* by legislative act or authority. There is no restriction on the general power, unless it be found in the Constitution of the State.[2] In case of division, the legislature may, as we have already seen, *apportion the burden* between the two, and determine the proportion to be borne by each.[3] In Connecticut, "the legislature," says the Supreme Court,

Recording town plats. Bemis *v.* Becker, 1 Kan. 226; Mason *v.* Pitt, 21 Mo. 391; Strong *v.* Darling, 9 Ohio, 201; *post*, sec. 628. Where the *power to alter boundaries* is committed to local tribunals their acts must be strictly within the powers granted, otherwise they will be void. Jacksonville *v.* L'Engle, 20 Fla. 344.

Locality, under the Canadian system of municipal government, is subject to taxation. Each portion of a county therefore should bear its proper proportion of the taxation of the whole county. Where a portion is detached from one and added to another county, some mode of *adjustment of existing liabilities* becomes indispensable. See McKee *v.* Huron District Court, 1 Upper Can. Q. B. 368; North Dumfries, *v.* The County of Waterloo, 12 Upper Can. Q. B. 507; County of Wellington *v.* Township of Waterloo, 8 Upper Can. C. P. 358; County of Wellington *v.* Township of Wilmot, 17 Upper Can. Q. B. 82. See, also, Windham *v.* Portland, 4 Mass. 384; Hampshire *v.* Franklin, 16 Mass. 76; Plunkett's Creek *v.* Crawford, 27 Penn. St. 107; New London *v.* Montville, 1 Root (Conn.), 184; North Yarmouth *v.* Skillings, 45 Me. 133; Lakin *v.* Ames, 10 Cush. 198; Brewster *v.* Harwich, 4 Mass. 278; Randolph *v.* Braintree, 4 Mass. 315; Blackstone *v.* Taft, 4 Gray, 250; Hartford Bridge Co. *v.* East Hartford, 16 Conn. 149; East Hartford *v.* Hartford Bridge Co., 17 Conn. 80; Crawford County *v.* Iowa County, 2 Chand. (Wis.) 14.

[1] Mount Pleasant *v.* Beckwith, 100 U. S. 514 (1879); noted more fully *ante*, sec. 170, note.

[2] *Ante*, chap. iv. secs. 54 63; *supra*, sec. 186. Where part of a township is set off to form another, the two townships are not both new corporations, the old corporation continues as before, and remains chargeable with its former obligations. Courtright *v.* Brooks Township, 54 Mich. 182.

[3] *Ante*, sec. 63, *et seq.*; Londonderry *v.* Derry, 8 N. H. 320 (1836); Bristol *v.* New Chester, 3 N. H. 532; Sill *v.* Corning, 15 N. Y. 297; People *v.* Draper, 15 N. Y. 532; Smith *v.* Adrian, 1 Mich. 495; Waring *v.* Mobile, 24 Ala. 701; Mayor *v.*

"have immemorially exercised the power of dividing towns at its pleasure, and upon such division, apportioning the common property and common burdens in such manner as to it shall seem reasonable and equitable."[1] Accordingly, it may impose on one town, upon such division, the entire expense of erecting and maintaining a bridge across a river which is the dividing line between the two towns.[2]

§ 188 (128). **Property on Division.** — On the *division* of a town or public corporation *possessing corporate property*, into two separate towns or communities, *each*, in the absence of a different provision by the legislature, was considered by the Supreme Court of New York to be *entitled to hold* in severalty *the public property* which fell within its limits.[3] In Connecticut, it is declared to be "well settled

State, 15 Md. 376; Love *v.* Schenck, 12 Ire. Law, 304 (1851); Love *v.* Ramsour, 12 Ire. Law, 328 (1855); Olney *v.* Harvey, 50 Ill. 453; Sedgwick Co. *v.* Bailey, 11 Kan. 631 (1873); Sangamon County *v.* Springfield, 63 Ill. 66 (1873); Dunmore's Appeal, 52 Pa. St. 374; Barklev *v.* Levee Comm'rs, 93 U. S. 258 (1876); Broughton *v.* Pensacola, 93 U. S. 266 (1876); County Court *v.* County Court, 2 Bush (Ky.), 93; Schriber *v.* Langdale, 66 Wis. 616; Knight *v.* Town of Ashland, 61 Wis. 233. The parent town, being liable for the whole debt, is the agent of the new town in defending an action on the liability, and when it acts in good faith and with diligence and skill, the new town is bound by the result of the action. Mt. Desert *v.* Monmouth, 72 Me. 348. And see *ante*, chap. iv. for a general view of the *extent of the legislative authority* over public and municipal corporations and their rights, liabilities, property, and contracts; and chap. vii. as to the *dissolution* of municipal corporations and its effect upon their creditors and property.

[1] Granby *v.* Thurston, 23 Conn. 416, 419, *per Waite*, C. J.; Willimantic Society *v.* School Society (division of school societies and funds), 14 Conn. 457; Hartford Bridge Co. *v.* East Hartford (ferry franchise), 16 Conn. 149; affirmed, 10 How. (U. S.) 511, 541; Laramie County *v.* Albany County, 92 U. S. 307 (1875). Legislature cannot control an educational fund raised by individual bounty and not by taxation (Plymouth *v.* Jackson, 15 Pa. St. 44), or direct a division of the funds between two towns different from that which is prescribed in the will of the donor. Greenville *v.* Mason, 53 N. H. 515 (1873). See, also, Montpelier *v.* East Montpelier, 27 Vt. 704; 29 Vt. 12; *ante*, secs. 64, 80, 85, 171.

[2] Granby *v.* Thurston, *supra; ante*, sec. 71.

[3] North Hempstead *v.* Hempstead, 2 Wend. 109 (1828). "Suppose," says *Savage*, C. J., delivering the opinion of the court in this case, "the State to be divided into two States: without some special agreement, each would own the public property within its limits. So of counties: the public buildings remain the property of the old county; yet public buildings are as much public property as public lands. So as to the plains, meadows, and marshes which are the subject of this suit. A bill filed by a new county for the partition of the gaol and court-house, which had been common property, would be the same in principle as the bill in this suit. Would not such a suit be considered preposterous? Suppose a religious corporation possessed of a church and parsonage; it becomes expedient to erect part into a new corporation: would not the old corporation retain the property, unless an agreement was made as to the partition of it?" 2 Wend. 109, 135; Laramie County *v.* Albany, 92 U. S. 307 (1875); West Carroll *v.* Gaddis, 34 La. An. 928. Incorporation of a part of a *town* into a *city*, held not to divest the title of the town to a tract of land owned by it in fee simple, "in trust, for the use of the town forever." Milwaukee *v.* Milwaukee, 12 Wis. 93.

In *Michigan*, it is held that when a city is incorporated from part of the territory of a township the property rights of the township are not affected unless provision is made therefor by statute. Board of Health *v.* East Saginaw, 45 Mich. 257.

that when part of the inhabitants and territory of an *older town* are erected into a new corporation, the old town retains all of the property, rights, and privileges formerly belonging to it, and is subject to all its former duties and liabilities, at least as it regards property which has no fixed location in the new town, as lands, buildings, etc." Accordingly, "upon the division of Hartford, no part of the ferry franchise would pass to the new town of East Hartford, except by virtue of a legal provision to that effect."[1] So it has been frequently held that if a new corporation is created out of the territory of an old corporation or if part of its territory or inhabitants is annexed to another corporation,[2] unless some provision is made in the act respecting the property and existing liabilities of the old corporation, the latter will be entitled to all the property, and be solely answerable for all the liabilities.[3]

§ 189 (129). **Power of Legislature to apportion Debts and Property.** — But upon *the division of the old corporation*, and the creation of a new corporation out of part of its inhabitants and territory, or upon the annexation of part to another corporation, the *legislature may provide* for an *equitable appropriation or division* of the property, and impose upon the new corporation, or upon the people and territory, thus disannexed, the obligation to pay an equitable proportion of the corporate debts.[4] The *charters and constituent acts* of

[1] *Per Church*, J., in Hartford Bridge *v.* East Hartford, 16 Conn. 149, 171 (1844); affirmed by Supreme Court of the United States, 10 How. (U. S.) 511, 541. Approving Windham *v.* Portland, 8 Mass. 384; Hampshire *v.* Franklin, 16 Mass. 76; North Hempstead *v.* Hempstead, 2 Wend. 109; *ante*, sec. 9.

[2] Windham *v.* Portland, 4 Mass. 384 (1808); Richards *v.* Daggett, 4 Mass. 539; Hampshire *v.* Franklin, 16 Mass. 76 (1819); Richland County *v.* Lawrence, 12 Ill. 1 (1850); Blackstone *v.* Taft, 4 Gray, 250 (1855); North Yarmouth *v.* Skillings, 45 Me. 133, 142 (1858); Cobb *v.* Kingman, 15 Mass. 197; Minot *v.* Curtis, 7 Mass. 441, 445; Opinion of Supreme Judges, 6 Cush. 575; *Ib.* 578; Laramie County *v.* Albany County, 92 U. S. 307 (1875), where the cases are cited, and the subject learnedly discussed by *Clifford*, J. Greenville *v.* Mason, 53 N. H. 515 (1873); Depere *v.* Bellevue, 31 Wis. 120 (1872); s. c. 11 Am. Rep. 602.

[3] Text cited and approved. Mount Pleasant *v.* Beckwith, 100 U. S. 514; Turnbull *v.* Alpena School Dist., 45 Mich. 496.

[4] Gorham *v.* Springfield, 21 Me. 61; North Yarmouth *v.* Skillings, 45 Me. 133 (1858); Brewster *v.* Harwich, 4 Mass. 278; *Ib.* 315; *Ib.* 384; Harrison *v.* Bridgton, 16 Mass. 16; *Ib.* 76 (1819); Lakin *v.* Ames, 10 Cush. 198 (1852). See School District *v.* Richardson, 23 Pick. 62 (1839), as to the effect in *Massachusetts* upon the title to property of the abolition of old *school* districts and the formation of new

public and municipal corporations are not, as we have before seen, contracts, and *they may be changed at the pleasure of the legislature,*

ones; followed by School District *v.* Tapley, 1 Allen, 49; but a *dictum* therein questioned by *Hoar*, J. Simmons *v.* Nahant, 3 Allen, 316, as to necessity of a deed of conveyance for real estate. Sanbornton *v.* Tilton, 55 N. H. 603 (1875); s. c. 53 N. H. 438; Tilton *v.* Sanbornton, 55 N. H. 610. Note relating to division of property under legislative act. Southampton *v.* Fowler (Little Islands on division of town), 52 N. H. 225 (1872); Tileson *v.* Newman, 23 Vt. 421; Richards *v.* Daggett, 4 Mass. 534; Waldron *v.* Lee, 5 Pick. 323. In *Pennsylvania* it was held that on a division of a township, each fraction remains liable for the whole debt due by the old township; if one pays the whole amount, it lays the foundation for contribution. Plunkett Township *v.* Crawford, 27 Pa. St. 107 (1856). See New London *v.* Montville, 1 Root (Conn.), 184; Hughes *v.* School District, 72 Mo. 643. On annexation of a portion of a township to a city, the residue retains all its property, real and personal, unless a different disposition has been made by the terms of the division. People *v.* School Trustees, 86 Ill. 613. As to right to collect taxes on such division, see Barnett Township *v.* Jefferson County, 9 Watts, 166; Devor *v.* McClintock, 9 Watts & S. 80; Police Jury, &c. *v.* McCormack, 32 La. An. 624; sustaining text, Board, &c. *v.* Board, &c., 30 W. Va. 424 (1887). In Morgan *v.* Town of Waldeck, 17 Fed. Rep. 286, it appeared that the town, which had been carved out of another, had, through its officers and people, repeatedly recognized its liability for its portion of the debt of the town out of which it was created, and it was decided that it was liable for its proportion of the debt, although there was doubt whether the proceedings in setting it off were legal.

As to *support of poor* in case of division. North Whitehall *v.* South Whitehall, 3 Serg. & Rawle (Pa.), 117; Overseers, &c. *v.* Overseers, &c., 2 *Ib.* 422; Stillwater *v.* Green, 4 Halst. (N. J.) 59.

Where there has been an *insufficient legal division* and organization of a new district, this may be afterwards *ratified* and made binding. Sawyer *v.* Williams, 25 Vt. 311; Pierce *v.* Carpenter, 10 Vt. 480; Alden *v.* Rounsville, 7 Met. 219.

Unless otherwise provided by legislation *the detachment of territory from a township* does not affect its ownership of anything but lands; debts and other incorporeal rights — as here, liquor taxes previously due — still belong to the township. Springwells *v.* Wayne County, 58 Mich. 240.

The *mode of proceeding*, under the statute of *New York*, in the division of old and the erection of new towns, the *directory* nature of the statute as to mode of proceeding, and the presumption in favor of the regularity of the proceedings, are clearly set forth in the case of The People *v.* Carpenter, 24 N. Y. 86.

As illustrating the *directory* nature of such statutes, see Elmendorf *v.* Mayor, 25 Wend. 693; Striker *v.* Kelly, 7 Hill (N. Y.), 9. But an agreement in such division, transcending the powers of the officers who make it, is not binding on the town. Overseers *v.* Same, 18 Johns. 382. Effect of erection of a *new* out of a portion of an old county on the *terms* of officers who respectively *reside* in the new and old portions, see People *v.* Morrell, 21 Wend. 563 (1839), and authorities cited by *Cowen*, J., p. 580. County commissioners must, by law, reside in the county, and on the erection of a new county in which their residence is included they become *residents* of the *new* county and non-residents of the old county, and cannot legally act for it, unless they remove within it; though if they continue to act without such removal their acts are valid, being officers *de facto*. State *v.* Hartshorn, 17 Ohio, 135; State *v.* Jacobs, *lb.* 143. A bill in equity will not lie to *set aside a settlement of accounts* made by two boards of supervisors upon the division of a township by creating a new one, on the ground that one of the boards was inferior to the other in ability and experience, or that it was misled as to the financial condition of its own township. The law presumes such a board to be competent to transact the business entrusted to it.

subject only to the restraints of special constitutional provisions, if any there be. And it is an ordinary exercise of the legislative dominion over such corporations to provide for their enlargement or division; and, incidental to this, to apportion their property and to direct the manner in which their debts or liabilities shall be met, and by whom. The opinion has been expressed that the partition of the property *must be made at the time of the division* of, or change in, the corporation, since otherwise the old corporation becomes, under the rule just before stated, the sole owner of the property, and hence cannot be deprived of it by a *subsequent* act of the legislature.[1] But, in the absence of special constitutional limitations upon the legislature, this view cannot, perhaps, be maintained, as it is inconsistent with the necessary supremacy of the legislature over all its corporate and unincorporate bodies, divisions, and parts, and with several well-considered adjudications.[2]

§ 190 (130). **Corporate Seal; Power to adopt and alter.** — The charters of municipal corporations usually contain a clause authorizing them *to have and use a common seal*, and to *alter* the same at pleasure. Without an express grant it is, however, incident to every corporation to adopt and use a corporate seal. The essential importance which the common law anciently attached to seals, and the modern relaxation of the rule, are well known. Respecting seals, the same general principles apply to private and to municipal corporations. Thus, a corporation of the latter class would doubtless be bound equally with a private corporation by any seal which has been *authoritatively affixed* to an instrument requiring it, though it be not the seal regularly adopted.[3] On the other hand, it would not be

Township of Churchill *v.* Township of Cummings, 51 Mich. 446.

[1] Hampshire *v.* Franklin, 16 Mass. 76; Windham *v.* Portland, 4 Mass. 390; Bowdoinham *v.* Richmond, 6 Greenl. (Me.) 112, holding that subsequent legislation could not change the apportionment of the debts between an old town and one created from it, since such an apportionment was in the nature of a contract. But see, *ante*, chap. iv. secs. 64, 75.

[2] Layton *v.* New Orleans, 12 La. An. 515 (1857), cited, *ante*, sec. 63; Laramie County *v.* Albany County, 92 U. S. 307 (1875); Dunmore's Appeal, 52 Pa. St. 374. In this last case one borough was divided into four, and the legislature was held to have *the power afterwards to provide for an equitable adjustment* of the indebtedness among them all, by commissioners to be appointed by a designated court, and from whose determination no appeal was allowed. As to extent of legislative control over public and municipal corporations, and their rights, liabilities, property, and contracts, see *ante*, chap. iv. and cases there cited; Cooley, Const. Lim. 193, 231, 232; *ante*, secs. 172, 173; *post*, chapter on Taxation.

[3] Bank, &c. *v.* Railroad Co., 30 Vt. 159 (1858), *per Redfield*, C. J.; Tenney *v.* Lumber Co., 43 N. H. 343; Mill Dam Foundry *v.* Hovey, 21 Pick. 417; Porter *v.* Railroad Co., 37 Me. 349; Angell & Ames, Corp. sec. 217; Phillips *v.* Coffee, 17 Ill. 154; Stebbins *v.* Merritt, 10 Cush.

bound by the affixing of either the regular or temporary seal by a person not legally and duly authorized.[1] So, under the modern doctrine, a corporation can do an act *in pais* by an attorney in fact, and such attorney need not necessarily be appointed under seal.[2]

§ 191 (131). **Seal, how proved.** — The *seal* of a private corporation attached to an instrument *does not prove its own authenticity;* but it should be shown by evidence *aliunde* to be really the seal of the corporation.[3] The same doctrine is, probably, applicable to the seal of a municipal corporation, except where changed by charter or statute, although it seems that it is usual in England to allow deeds and other instruments relating to real estate to go to the jury when authenticated by the corporate seals of London, Edinburgh, or Dublin, — these being corporations of great antiquity, or recognized by the legislature.[4] The corporate seal attached to an instrument, attested by the signatures of the proper officers, is *prima facie* but not conclusive evidence that it was lawfully placed there, and that the instrument is the act of the corporation.[5]

27; City Council *v.* Moorehead, 2 Rich. Law, 430; Grant on Corp. 59, and cases; and note author's opinion and his doubt as to the existence of any *common law* right to *change* the common seal. An impression of a corporate seal *stamped upon and into the substance of the paper containing the instrument is sufficient, without wafer or wax.* Hendee *v.* Pinkerton, 14 Allen, 381.

[1] Koehler *v.* Iron Co., 2 Black, 715 (1862); Bank of Ireland *v.* Evans, 32 Eng. Law & Eq. 23. "But where a corporation is created by an act *for particular purposes with special powers*, then another question arises; their deed, though under their corporate seal, and that regularly affixed, does not bind them if it appear by the express provisions of the statute creating the corporation, or by necessary or reasonable inference from its enactments, that the deed was *ultra vires;* that is, that the legislature meant that such a deed should not be made." *Per Parke*, B., in South Yorkshire Railway Co. *v.* Great Northern Railway Co., 9 Ex. 55, 84; adopted by *Martin*, B., in Payne *v.* Brecon, 3 H. & N. 579. See also Holdsworth *v.* Dartmouth, 11 A. & E. 490; Regina *v.* Lichfield, 4 Q. B. 893; Pallister *v.* Gravesend, 9 C. B. 774; Nowell *et al. v.* Worcester, 9 Ex. 457; Kendall *v.* King, 17 C. B. 483.

[2] Curry *v.* Bank, 8 Porter (Ala.), 361 (1839); Lathrop *v.* Bank, 8 Dana, 114; Abby *v.* Billups, 35 Miss. 618.

[3] Den *v.* Vreelandt, 2 Halst. (N. J.) 352 (1800); Gilbert, Ev. 19; Jackson *v.* Pratt, 10 Johns. 381; Moises *v.* Thornton, 8 Term R. 303; City Council *v.* Moorehead, 2 Rich. (S. C.) Law, 430; Foster *v.* Shaw, 7 Serg. & Rawle (Pa.), 163; *Ib.* 318; Mann *v.* Pentz, 2 Sandf. Ch. 257.

[4] *Per Kinsey*, C. J., Den *v.* Vreelandt, 2 Halst. (N. J.) 352.

[5] Levering *v.* Mayor, 7 Humph. (Tenn.) 553 (1847); Memphis *v.* Adams, 9 Heisk. (Tenn.) 518 (1872); Abbott, Corp. Digest, tit. *Seal*, p. 725, sec. 56, and the many cases there cited; Benedict *v.* Denton Walk. Ch. 336; Railway Co. *v.* Railway Co., 9 Exchq. 55, 84; Musser *v.* Johnson, 42 Mo. 74. In *Iowa*, the county seal held to be essential to the validity of a *county warrant*. Prescott *v.* Gouser, 34 Iowa, 178; Springer *v.* Clay Co., 35 Iowa, 243; Smeltzer *v.* White, 92 U. S. 390 (1875).

§ 192 (132). **Seal, where not necessary.** — The modern rule is that corporations may be bound by *contracts not under seal*, and the circumstances under which they will be bound have been stated by Story, J., in terms which have been approved by the courts of nearly every State in the Union. "Wherever a corporation is acting within the scope of the legitimate purposes of its institution, all *parol* contracts made by its authorized agents are *express* promises of the corporation; and all duties imposed on them by law, and all benefits conferred at their request, raise *implied* promises, for the enforcement of which an action lies." [1]

[1] Bank of Columbia *v.* Patterson, 7 Cranch (U. S.), 299, 306 (1813); Bank *v.* Wister, 2 Pet. 318; Davenport *v.* Insurance Co., 17 Iowa, 276; Ring *v.* Johnson County, 6 Iowa, 265; Over *v.* Greenfield, 107 Ind. 231. See further, Chaps. on Contracts and Property, *post*, secs. 459, 936. Corporate seal affixed to the note of the corporation makes it a specialty, having in this respect the same effect as the seal of a natural person. Clarke *v.* Farmers', &c. Co., 15 Wend. 256; *Ib.* 265; Benoist *v.* Carondolet, 8 Mo. 240; Sturtevant *v.* Alton, 3 McLean, 393. But corporate seals attached to municipal bonds payable to order or bearer do not destroy or affect their negotiability. See *post*, chap. xiv. on Contracts. Lease held void for want of the corporate seal. Kinzie *v.* Chicago, 2 Scam. (Ill.) 188. But otherwise of an authorized agreement by an agent of a corporation to sell lands (Legrand *v.* The College, 5 Munf. (Va.) 324), or authorized assignment of a lease. Sanford *v.* Tremlett, 42 Mo. 384. Corporate seal to conveyance by county commissioners. Bestor *v.* Powell, 2 Gilm. (7 Ill.) 126. Further, see Index — "Seal." Mr. Broom gives an excellent view of the exceptions to the rule that corporations must contract by deed, as recognized and established by the modern English decisions. Broom, Com. on Com. Law, 562–569. Seals in connection with *municipal bonds*. See chapter xiv. on Contracts, *post*.