proviso contained in the act of Congress passed for the relief of the original patentee.

Clear implication from the answer is, that they had made machinery such as that described in the letters patent, and if so, then they are clearly liable as infringers, as they were not incorporated at the date of the extended patent. Machines made since the patent was extended are not protected by that proviso, as is plain from its language; but the complainant cannot recover damages for any infringement antecedent to the date of the reissued patent, as the extended patent was surrendered.

Proofs of the complainant to show infringement consist in a comparison of the machines made by the respondents with the mechanism described in the patent, and in the testimony of scientific experts, and they are so entirely satisfactory, that it is not deemed necessary to pursue the investigation.

DECREE AFFIRMED.

MORGAN *v.* TOWN CLERK.

By the law, as settled in Wisconsin, a provision in a statute under which a town issued its bonds to a railroad, that a tax requisite to pay the interest on these bonds should be levied *by the supervisors* of the town, is not exclusive of a right in *the town clerk* to levy the tax under a general statute making it his duty to lay a tax to pay all debts of the town; a mandamus having issued under the first act, but after efforts to make it productive, having produced nothing.

ERROR to the Circuit Court for Wisconsin.

In 1853, the legislature of Wisconsin authorized the town of Beloit to issue its coupon bonds for the benefit of a certain railroad. The town did issue them accordingly; and a number of them, with coupons unpaid, having got in the hands of one Morgan, he brought suit and obtained judgment against the town.

The statute which authorized the town to issue the bonds thus enacted:

Argument for the defendant in error.

"The *board of supervisors* of the town of Beloit, whenever the same shall become necessary, shall annually levy a tax upon the taxable property of said town, sufficient to pay the interest upon such bonds."

The legislature of the same State in 1858 enacted thus:

"No execution shall issue on any judgment against a town, but the same shall be collected in the manner hereinafter provided.

"Whenever an exemplified copy of any final judgment, rendered by any court of this State, against any town in this State, together with an affidavit, &c., shall be filed in the office of the town clerk of the town against which such judgment may have been rendered, it *shall be the duty of the town clerk* to proceed to assess the amount thereof, with interest from the date of such judgment to the time when the warrant for the collection thereof will expire, upon the taxable property of said town; and the same proceedings shall be had thereon, and the same shall be collected and returned in the same manner as other town taxes, and shall be paid to the party entitled thereto."

Morgan having obtained, under the act of 1853, a mandamus, attachment, &c., against different boards of supervisors, which, however, from their resignations, vacation of office, &c., produced no fruit, he applied to the court below, having first filed the required exemplification, affidavit, &c., for a mandamus on the town clerk, under the last quoted act, to compel *him* to levy a tax. The court below refused to grant the mandamus asked for, on the ground, as was said, that the act of 1853 provided a special remedy exclusive of the general one of the act of 1858. Whether it did so or not, was now the question on appeal.

Mr. Carpenter, for the plaintiff in error, contended that he had exhausted his remedy under the act of 1853; and that he might seek relief under both acts until he obtained one satisfaction.

Messrs. Palmer and Ryan, contra:

This is not a case of alternative remedies, of which the re-

lator has an election. He can have but one payment, levied by one tax, once assessed. And if it be the duty of the supervisors to levy the tax, it cannot be the duty of the clerk. The special act providing for the special tax, to pay these special liabilities, to be levied by the supervisors, takes this judgment out of the general act, providing for the assessment of a tax by the clerk, to pay other judgments against towns. The relator should have applied in the court below for *mandamus* against the supervisors, and not against the clerk.

Mr. Justice SWAYNE delivered the opinion of the court.

On the 9th of January, 1861, the plaintiff in error recovered a judgment against the defendant in error for $1540 damages, and for costs. The cause of action was overdue interest coupons attached to bonds issued by the town of Beloit in payment of its subscription to the stock of the Racine, Janesville, and Mississippi Railroad Company, pursuant to chapter 12 of the local and private laws of Wisconsin, passed in 1853. The plaintiff in error instituted the proceedings in the court below to obtain a writ of mandamus, directed to the town clerk of the defendant, commanding him to assess the amount necessary to pay the judgment and interest, upon the taxable property of the town, and to place the assessment upon the next assessment and tax roll for collection. A statute of Wisconsin* forbids the issuing of an execution against a town, and expressly prescribes this mode of procedure.

Ample authority to issue the writ is given by the statute. The proceedings on the part of the plaintiff in error are in all things in strict conformity to its requirements. The power of the Circuit Court to issue writs of mandamus to State officers in proper cases is no longer an open question in this court; and it has been repeatedly held to be an appropriate remedy in the class of cases, to which the one lying at the

* Ch. 15, § 77, Revised Statutes of 1858, p. 186.

foundation of this proceeding belongs.* We learn from the record that the court below denied the writ upon the ground that the statute under which the bonds were issued, provided that the requisite tax should be levied by the supervisors of the town, and that this remedy was exclusive of all others. There are several obvious answers to this view of the subject. We deem it sufficient to advert to one of them. In the case of *Bushnell* v. *Gates*,† this precise question, arising under the same circumstances, came before the Supreme Court of Wisconsin. It was held that the objection was untenable, that the statute authorizing the writ to go against the town clerk applied to the case, and that it was conclusive. If there could otherwise have been any doubt upon the question, this determination by the highest court of the State giving a construction to the statute under consideration, is unanswerable. We need not further consider the subject.

The judgment below is REVERSED. A mandate will be sent to the Circuit Court, directing that an order be entered in the case

IN CONFORMITY WITH THIS OPINION.

MORGAN *v.* BELOIT, CITY AND TOWN.

Where the legislature creates a city, carving it out of a region previously a town only, and enacts that all bonds which had been previously issued by the town should be paid when the same fell due, by the *city and town*, in the same proportions as if said town and city were not dissolved, and that if either at any time pays more than its proportion, the other shall be liable therefor, a bill will lie in equity to enforce payment by the two bodies respectively, in the proportion which the assessment rolls

---

* The Commissioners of Knox Co. *v.* Aspinwall, 24 Howard, 376; Von Hoffman *v.* The City of Quincy, 4 Wallace, 535; Riggs *v.* Johnson County, 6 Id. 166.

† Not yet reported.