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

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* 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.

Statement of the case.

show that the property in one bears to the property in the other. A bondholder is not confined to *mandamus* or other legal remedies, if such exist.

APPEAL from the Circuit Court for Wisconsin.

In 1853, the legislature of Wisconsin authorized *the town* of Beloit to subscribe to the stock of a railroad company, and to pay therefor in bonds of the town. The town subscribed and issued its bonds, a portion of which came to the hands of one Morgan, a *bonâ fide* purchaser.

In 1856, the legislature created *the city* of Beloit, this city being carved out of a portion of the territory which had constituted the town of Beloit. The charter of the new city thus provided:

"All principal and interest upon all bonds which have heretofore been issued by the town of Beloit, . . . *shall be paid when the same or any portion thereof shall fall due*, by the *city* and *town* of Beloit, in the *same proportions as if said town and city were not dissolved. And in case either town or city shall pay more than their just and equal portion of the same at any time, the other party shall be liable therefor.*"

This provision was re-enacted in 1857.

After the date of this act, and between it and 1867 inclusive—the interest on the bonds being unpaid for every year after 1854—Morgan brought several suits, in the Circuit Court for Wisconsin, against "the town of Beloit," for the interest due for the years respectively, and on the 25th of September, 1867, got judgment against the *town* for it. The judgments being unpaid, he now filed a bill in the court below against the *town and city* of Beloit. The bill set forth facts above stated, alleged that the "amount of said judgments *ought* to be paid by said defendants in the proportions respectively as provided in the said acts;" that the taxable property of the city exceeded that of the town; and that though the city "ought to pay the proportion provided in the acts," yet that the complainant was remediless at law. It then showed, by tabular exhibit, the amount of the interest due on the bonds held by him, in each year respectively, from 1855

to 1867; then by like exhibit the proportion in value, which, taking the rates of assessment made in each year as a basis, the taxable property of what was now the town bore to what was now the city, in every year, from 1855 to 1867; then showed, by similar exhibit, that, taking these relative exhibits, the town would be liable on the coupons for each respective year for so much and the city for so much, the balance, namely; the whole making, with interest from the date of the judgments obtained (which the bill alleged "ought to be paid by the said town and city respectively"), the sum of $60,443, as against the city, and $17,986, as against the town.

After alleging that "the city and town ought respectively to pay interest" on the respective total amounts, from the day when the judgments were obtained till the actual payment of them, and "ought each to pay one-half the costs recovered in the judgments," the bill concluded thus:

"To the end, therefore, that the said defendants may, if they can, show why your orator should not have *the relief hereby prayed*, and may upon oath, &c. . . . and that your orator may have such *other and further* relief as the nature of his case may require, and as shall be agreeable to equity and good conscience."

Prayer for subpœna, &c.

The defendants (town and city) demurred, and the bill was dismissed. Appeal accordingly.

Mr. Carpenter, for the appellant:

The complainant was clearly entitled to some remedy against the city for its proportion of the debt, and the question is, what was the appropriate remedy?

On bonds given by the town, a *joint* action at law could not be maintained against the town and city.* To an action at law against the city alone, the plea of *non est factum* would be true in fact and fatal in law. If any action at law could be maintained against the city, it would be debt *founded on*

* Goodhue *v.* Beloit, 21 Wisconsin, 636.

the statute. But there would be the difficulty of settling, as between the city and the town, the proportion which each ought to pay, in an action where the town was not a party. This consideration alone gives a court of equity jurisdiction. If the town were compelled to pay the whole debt, it would be entitled, by the express provisions of the statute, to an action against the city for its proportion. Circuity of actions —that which courts desire to prevent—is therefore avoided by maintaining a suit in equity against both. A court of equity is the only tribunal that can render complete justice between all the parties.

Messrs. Palmer and Ryan, contra:

The bill is without any prayer for special relief. What, indeed, is its object? Is it for a declaratory decree of the proportions in which the judgments should be paid by the city and town, leaving the plaintiff to his *mandamus* to enforce a tax accordingly? Or is it for a decree awarding execution against the defendants? No one can tell. The omission to make the proper prayer is fatal. Even under the dangerous and inconvenient rule, held in a few cases, that a prayer for general relief is sufficient, and that the special relief may be prayed for at the bar, on hearing, the bill must indicate by its frame the special relief sought, which this bill does not. But this court has wisely abrogated that rule, and by its twenty-first rule in equity, provides that "the prayer of the bill *shall* ask the special relief to which the plaintiff supposes himself entitled, and also shall contain a prayer for general relief."

On merits, the case is not good. Though equity is liberal in the adaptation of her remedies, she does not give a remedy to every party merely because he is in difficulty, nor unless his difficulty be covered by some specific ground of equitable jurisdiction. Here there is an adequate legal remedy by *mandamus*. It may be a troublesome remedy. But he has it. And equity will not devise a new ground of jurisdiction because a speculator in town bonds is unlucky in his legal remedies.

Reply: The prayer is, *in effect*, a prayer for both special and general relief. But if it were for general relief alone, that would be sufficient, upon the facts stated in the bill.*

Mr. Justice SWAYNE delivered the opinion of the court.

The bill of the appellant presents the following case: In the year 1853, the legislature of Wisconsin, by an act duly passed, authorized the *town of Beloit* to subscribe for $100,000 of the stock of a railroad company authorized to construct a railroad from the city of Racine to the village of Beloit, and to make payment in its bonds to be issued for that purpose. The bonds were accordingly issued. A portion of them came into the hands of the appellant, and he recovered upon them the several judgments at law described in the bill. These judgments are all in full force and unsatisfied. By an act of the legislature, passed in 1856, the *city of Beloit* was created. It embraces a part of the territory which before constituted the *town of Beloit*. This act provides:

"That all principal and interest upon all bonds which have heretofore been issued by *the town of Beloit* for railroad stock or other purposes, shall be paid, when the same or any portion thereof shall fall due, *by the city* and *town of Beloit*, in the same proportions as if the said city and town were not dissolved."

This provision was re-enacted in 1857.

It is averred that the *city* and *town* ought respectively to pay the proportions set forth—of the judgments—with interest from their several dates. The prayer is for general relief. The appellee demurred. The court sustained the demurrer, and dismissed the bill. This appeal was thereupon taken.

The two corporations are as separate and distinct as if the territories they embrace, respectively, had never been united. It is obvious that, without a legislative provision to that effect, *the city* would not be answerable at law for the debts of *the town*, incurred before the former was created. Whether,

* Tayloe *v.* Insurance Company, 9 Howard, 390.

but for the statute, the city there would have been chargeable in equity, it is not necessary to consider. The statute is conclusive as to a liability, to be enforced in some form of procedure. The only question before us is, whether there is a remedy in equity. It may be, as suggested by the counsel for the appellant, that an action would lie upon the statute. It is also possible that a proper case for a writ of *mandamus* might be made. But these inquiries are only material as bearing upon the question whether there is an adequate remedy at law. If so, a suit in equity cannot be maintained. To have this effect, the remedy at law "must be as plain, adequate, and complete," and "as practical and efficient to the ends of justice, and to its prompt administration, as the remedy in equity."* When the remedy at law is of this character, the party seeking redress must pursue it. In such cases the adverse party has a constitutional right to a trial by jury.† The objection is regarded as jurisdictional, and may be enforced by the court *suâ sponte*, though not raised by the pleadings, nor suggested by counsel.‡ The provision upon the subject in the sixteenth section of the Judiciary Act of 1789, was only declaratory of the pre-existing rule.

In the case before us the adjustment of the amount to be paid by the city, will depend upon accounts and computations founded upon the proper assessment rolls. In order to bind the town, it is necessary that it should be made a party. This cannot be done in proceedings at law. If the town should be compelled to pay the entire amount, the right is given by the statute to recover back the proportion for which the city is liable. This would involve circuity of litigation. The remedy at law is, therefore, neither plain nor adequate.

The question, whether a bill in equity will lie, is disembarrassed of this objection.

The authority to tax for the payment of municipal liabili-

* Boyce *v.* Grundy, 3 Peters, 215. † Hipp *v.* Babin, 19 Howard, 278.
‡ Fowle *v.* Lawrason, 5 Peters, 496; Dade *v.* Irwin, 2 Howard, 383.

ties, in cases like this, is in the nature of a trust.* The jurisdiction of a court of equity to interfere in all cases involving such an ingredient, is too clear to require any citation of authorities. It rests upon an elementary principle of equity jurisprudence.

"The power is reserved to a court of equity to act upon a principle often above-mentioned, namely, that whenever there is a right it ought to be made effectual."† Where there is a right which the common law, from any imperfection, cannot enforce, it is the province and duty of a court of equity to supply the defect and furnish the remedy.‡

The decree is REVERSED. A mandate will be sent to the Circuit Court directing that the demurrer be overruled, and the cause proceeded in according to the principles of equity and the rules of equity practice.

BELOIT *v.* MORGAN.

1. A judgment in favor of a bondholder upon certain municipal bonds, part of a larger issue, against the town issuing them, is conclusive on a question of the validity of the issue on a suit brought by the same creditor against the same town, on other bonds, another part of the same issue; the parties being identical, and all objections taken by the town in the second suit having been open to be taken by it in the former one.
2. A legislative enactment created the city of Beloit, carving it out of territory previously covered by the town of Beloit only. The statute enacted thus:

> "All principal and interest upon all bonds which have heretofore been issued by the town of Beloit, for railroad stock or other purposes, shall be paid when the same, or any portion of the same, shall fall due, by the city and town of Beloit, in the same proportions as if said town and city were not dissolved, such proportions to be apportioned," &c.

Held, that this made bonds issued by the town valid, assuming that previously to the act they were not so.

APPEAL from the Circuit Court for Wisconsin.

The legislature of Wisconsin, by act of 1853, authorized

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* Von Hoffman *v.* The City of Quincy, 4 Wallace, 555.

† 1 Kaime's Principles of Equity, 3.

‡ Quick *v.* Stuyvesant, 2 Paige, 92.