tutes the suit by his proper officer, the Attorney-General, who files the necessary information, or information and bill, as a prerogative right, — the right which the sovereign has to call, by his appropri-

funds of the corporation as to put the money into their own pockets when not authorized so to do, a bill in equity at the instance of a ratepayer, Blakie *v.* Staples, 13 Grant (Can.), 67, or an action at the suit of the corporation, will lie against them to recover it back; and when that misappropriation is mixed up with what may have been rightfully paid, it is but right, in order to operate as a safeguard to the corporation, to cast the burden of proof on the agent, to separate from the appropriation he has received that portion which he would be legally entitled to take. East Nissouri *v.* Horseman, 16 Up. Can. Q. B. 588. In Canada there is not only a civil but a criminal remedy. Daniels *v.* Burford, 10 Up. Can. Q. B. 481. See, further, Baxter *v.* Kerr, 23 Grant (Can.), 367. The treasurer should not pay money on any or every draft and order which the reeve for the time being may direct him to pay. The township moneys will probably be considered as still in his hands, unless paid out on a proper legal authority, for purposes contemplated and authorized by law, at least until he has received a formal acquittance and discharge from the municipality. East Nissouri *v.* Horseman *et al.*, 9 Up. Can. C. P. 191, *per Draper*, C. J. Nor should he pay money on an illegal order or resolution, for an Act of Parliament should be regarded by him as a higher authority than the resolution or by-law of a corporation created by an Act of Parliament. Daniels *v.* Burford, 10 Up. Can. Q. B. 481. And if a treasurer so pay money on an illegal order or resolution, he would be probably subject to criminal prosecution. East Nissouri *v.* Horseman, 16 Up. Can. Q. B. 580. But he is not now liable to any action at law for moneys paid by him in accordance with a by-law or resolution of the council. Harrison's Munic. Man. for Canada (5th ed.), p. 186.

In The Attorney-Gen. *v.* Wilson, 9 Simons, 30 (1837), affirmed by the Lord Chancellor, 1 Cr. & Ph. 1 (1840), which was an information and bill in equity by the Attorney-General at the relation of the corporation of Leeds, it was held that chancery had jurisdiction (notwithstanding a special remedy in the Municipal Corporations Act) to relieve against *fraudulent alienations of corporate property*, and that the corporation could impeach the fraudulent acts of its officers, and maintain a suit to set aside transactions fraudulent against it, though carried into effect in the name of members of its council; and this right the Lord Chancellor considered not to be affected by the circumstance that the Attorney-General had the like power. A similar *power to protect corporate property* was asserted by the Master of the Rolls in The Attorney-Gen. *v.* Liverpool, 13 Eng. Ch. (1 Mylne & Cr. 171), 343 (1835), where the information was filed by the Attorney-General at the relation of two merchants of Liverpool, one of whom was a burgess or ratepaying citizen, against the corporation of Liverpool. The line of English decisions cited in secs. 909 and 910 is referred to at length, and distinguished by *Allen*, J., in People *v.* Ingersoll, 58 N. Y. 1 (1874); *post*, secs. 913, 920, note, and cases, 922; *ante*, sec. 908, note.

If members of a corporation contrive a scheme to defraud a corporation of its property, they are personally liable. Attorney-Gen. *v.* Wilson, *supra*. See, also, Attorney-Gen. *v.* Lichfield, 11 Beav. 120; Attorney-Gen. *v.* Leicester, 9 Beav. 546; Attorney-Gen. *v.* Plymouth, 9 Beav. 67; Regina *v.* Liverpool, 9 A. & E. 435; Grant on Corp. 137–139, 142; *ante*, secs. 236, 237, note.

Whether funds derived by a municipality from taxation for municipal improvements, the payment of municipal expenses, &c., are *charitable funds*, see Attorney-Gen. *v.* Brown, 1 Swanst. 265; compare Attorney-Gen. *v.* Heelis, 2 Sim. & Stu. 67. Both of these cases are referred to in Attorney-Gen. *v.* Dublin, 1 Bligh N. R. H. L. Cas. 312, 334. See Carlton *v.* Salem, 103 Mass. 141 (1869), referred to *infra*, sec. 920, note.

ate officers, upon the several courts of justice, according to the nature of their respective jurisdictions, to see that right is done to his subjects, who are incompetent to act for themselves. While it is usual to join relators in the suit, it is not necessary. The object in joining them is that the defendants may not be oppressed, without remedy, by vexatious suits, since the relators are liable to costs, while the crown is not.[1]

§ 911 (730 *a*). **Extent and Mode of Equitable Interference in this Country.** — In this country the preventing or the redressing of the excesses of municipal power by a resort to a court of equity has given rise on some points to much contrariety of judicial opinion. Corporations here derive their powers from express legislative enactment. Most, if not all, of the States have an officer styled an Attorney-General, whose duties are prescribed by statute; and these duties differ in many respects from the duties of the Attorney-General in England. The question has several times arisen how far this officer, or the public law officer of the State, may exercise the powers which belong to the office of the Attorney-General at common law, — to file informations or bills in equity, to prevent or redress the illegal acts of municipal officers and corporations; and connected with this inquiry is the further one, when or in what cases private persons may in their own names resort to equity to prevent the municipal authorities from passing beyond the line of their rightful powers, or to have unauthorized corporate acts set aside or the injury caused thereby redressed or corrected. How far a court of equity may control the acts of municipal and public corporations or of their officers, and in what manner or at whose instance it will exercise its jurisdiction where it exists, are questions upon which, as above observed, the courts in this country are by no means fully agreed. It must suffice, in our further treatment of this subject, to notice briefly the adjudications respecting it, and to state what, in the absence of controlling legislative enactments, would appear upon principle and sound public policy to be the correct doctrine, as to the extent and mode of equitable interference with the exercise of municipal powers, or with the acts of municipal officers.

[1] *Per* Lord *Redesdale*, in the Attorney-Gen. *v.* Dublin, Bligh N. R. 312 (1827); Attorney-Gen. *v.* Birmingham, 3 Law Rep. Eq. 552 (1867); Attorney-Gen. *v.* Exeter, 51 Eng. Ch. 507 (1852); 29 Beav. 44. The answer of a municipal corporation to a bill in chancery need not be signed by an officer thereof; where the name of the corporation is written to such an answer, and there is nothing to show that it is unauthorized, it will be sufficient. Harrison *v.* Peoria, A. & D. R. R. Co., 77 Ill. 11 (1875).

§ 912 (730 *b*). **Suit by Attorney-General of the State.** — The weight of authority seems to be that the Attorney-General of a State, or its other public law officer, has by virtue of his office the right in his name, or in the name of the State, upon the relation of persons interested, to bring, in cases which are properly of equitable cognizance and which affect the public, a bill in equity to prevent municipal corporations from exceeding the line of their lawful authority, or to have their illegal acts set aside or corrected.[1] This doctrine

[1] Davis *v.* New York, 2 Duer, 663. In this case the subject is very learnedly discussed by Mr. Justice *Duer*, who cites and reviews the principal English authorities, and deduces from them the doctrine that when the act of a municipal corporation, which is the subject of complaint, affects injuriously and equally the entire public within the jurisdiction of the corporation, the Attorney-General is a necessary party. See, also, People *v.* Lowber, 7 Abb. (N. Y.) Pr. 158, — an action by the Attorney-General to prevent the corporation from completing an alleged unauthorized contract for the purchase of land on which to erect a market-house. People *v.* New York, 9 Abb. (N. Y.) Pr. 253; 10 Abb. (N. Y.) Pr. 144; Same *v.* Same, 32 Barb. (N. Y.) 102. In Doolittle *v.* Broome Co. Sup., 18 N. Y. 157, referred to *infra*, sec. 920, *Denio*, J., admits that the Attorney-General may file an information in equity to prevent an act which would be a breach of trust. The right of the Attorney-General to bring a suit to prevent the illegal issue of bonds by an incorporated town to a railroad company was denied by *Mullin*, J., in the Supreme Court, and the previous cases in that State above cited were disapproved; but it is observable that the learned judge seems to proceed upon the basis, believed to be fundamentally erroneous, "that the people, that is, the State in its corporate capacity and character, has no manner of interest" in a litigation where the question is whether corporate powers which it has granted have been exceeded or not. People *v.* Miner, 2 Lansing (N. Y.), 396 (1868); reaffirmed, People *v.* Alb. & Susq. R. R. Co., 5 Lansing (N. Y.), 25. In the People *v.* Ingersoll, 58 N. Y. 1 (1874), and People *v.* Field, 58 N. Y. 491, the Court of Appeals decided that the Attorney-General could not intervene by civil action in the name of the State to recover money due to the city of New York (*infra*, sec. 913).

In *California*, it has been decided that where a suit is instituted in the name of the State by the Attorney-General, on the relation of the real party in interest seeking relief, and the State has no interest therein, the Attorney-General, *as such*, has no power to control the suit or withdraw his consent to the use of the State's name, to the prejudice of the relator. People *v.* No. San F. H. & R. Assoc., 38 Cal. 564. See *ante*, chap. xx. *as to relator*.

In *Missouri* a very able lawyer, sitting as a special judge (*Shepley*, J.), upon a review of the English cases, held that an information in equity by a law officer of the State would lie to prevent the county authorities from doing an unauthorized act, such as issuing railroad bonds. State *v.* Saline Co., 51 Mo. 350 (1873); s. c. 11 Am. Rep. 454, *Wagner*, J., dissenting; *infra*, secs. 914, note, 919, note.

Suit on behalf of all *taxpayers*, when once entertained by the court, cannot be dismissed without an order of court. McAden *v.* Jenkins, 64 N. C. 796, before *Pearson*, C. J.

In Upper Canada the mayor is the head of the council, and the head and chief executive officer of the corporation, and it is held that a bill will lie in equity by some of the inhabitants of a municipality alleging an illegal misapplication of its funds by the mayor. Paterson *v.* Bowes, 4 Grant (Can.), 170. The Attorney-General is not a necessary party to such suit. *Ib.* Where the mayor of a city secretly contracted to purchase at a discount a large number of the debentures of the city, which it was expected would be issued under a contemplated by-law of the city council, and was afterwards himself an active party in procuring and giving effect to the by-law subsequently passed, he was held to be a trustee for the city of the profit derived from the transaction. Toronto *v.* Bowes, 4 Grant (Can.), 489, affirmed in appeal, 6 Grant (Can.), 1, and afterwards affirmed by the privy council; more fully *ante*, sec. 444. Harrison's Munic. Man. (5th ed.) 320, 321.

has been asserted by an able court, in a case where there was no statute giving the Attorney-General power to interfere to prevent an abuse of corporate powers, or prescribing the terms of such interference, and where the injury complained of by the relators was a disregard of the provisions of a municipal charter, which required contracts to be let to the lowest responsible bidder. It was conceded in that case that the Attorney-General would have the right to enjoin the misappropriation of a *charitable fund* held by the corporation; and the court considered that there was no substantial distinction between such a case and one where, under legislative authority, a corporation, authorized to raise funds by taxation for specified purposes or on certain conditions only, threatens effectually to abuse its powers in this respect by a misappropriation or unwarranted use of corporate moneys or funds.[1]

§ 913. **Same subject. Tweed Frauds in New York City.** — In cases arising out of the well-known municipal frauds in New York of Tweed and his confederates, it was held by the Court of Appeals that an action, unless given by statute, could not be maintained in the name of the State by the Attorney-General to recover a judgment in the name of the State for moneys illegally and fraudulently taken by the defendants from and belonging to the city of New York. As the ownership of such moneys was in the city

[1] Attorney-General *v.* Detroit, 26 Mich. 263 (1872); s. c. 12 Am. Law Reg. (N. S.) 148. "Every misuse of corporate authority is in a legal sense an abuse of trust, and the State, as the visitor and supervisory authority and creator of the trust, is exercising no impertinent vigilance when it inquires into and seeks to check it." *Ib. Per Cooley*, J., who in his opinion carefully considers what kind and degree of abuse of corporate power will justify the interference of the Attorney-General. It was held in this case that where the *council awarded the contract to the highest of two bidders for* putting down pavements, but the difference in the bids was less than $200, of which less than $30 was to be paid by the city, and the contractors had gone on without objection and incurred large expenses, and the lot-owners did not complain, the amount involved was too small to warrant the intervention of the Attorney-General, especially as it appeared that the error of the council, if any, was not intentional, but one of judgment only. *Ante*, sec. 659.

A judgment of the Supreme Judicial Court of *Massachusetts* sustained in its reasoning the principles laid down in the text and approved by the Supreme Court of *Michigan* in the case just cited. Attorney-Gen. *v.* Boston, 123 Mass. 460 (1877); *infra*, sec. 920, note; *ante*, sec. 113. As to *injunction* for restraining tax or assessment for paving street with *patented pavement*. Hobart *v.* Detroit, 7 Mich. 246; Attorney-Gen. *v.* Detroit, 26 Mich. 263; Dean *v.* Charlton, 23 Wis. 590; Harlem *v.* New York, 33 N. Y. 309; *ante*, sec. 467.

corporation, the court decided that the right of action to recover the same was in that corporation and not in the State. And it was further decided that the fact that the city corporation through its officers fraudulently colluded with the defendants, to protect them from civil actions to enforce their liability, did not give a right of action to the State or authorize the Attorney-General without express legislative sanction to bring suit in the name of the State to recover such moneys, making the wrong-doers and the municipality defendants.[1]

§ 914 (731). **When Taxpayers and Property-Holders may have Injunction.** — In this country, the right of *property-holders or taxable inhabitants* to resort to equity to restrain municipal corporations and their officers from transcending their lawful powers or violating their legal duties in any mode which will injuriously affect the taxpayers, — such as making an unauthorized appropriation of the corporate funds, or an illegal or wrongful disposition of the corporate property, or levying and collecting void and illegal taxes and assessments upon real property under circumstances presently to be explained, — has, without the aid of statute provision to that effect, been affirmed or recognized in numerous cases in many of the States. It is the prevailing, we may now add, almost universal doctrine on this subject. It can, we think, be vindicated upon principle, in view of the nature of the powers exercised by municipal corporations and the necessity of affording easy, direct, and adequate preventive relief against their misuse. It is better that those immediately affected by corporate abuses should be armed with the power to interfere directly in their own names than to compel them to rely upon the action of a distant State officer. The equity jurisdiction may, in such cases, usually rest upon fraud, breach of trust, multiplicity of suits, or the inadequacy of the ordinary remedies at law. It is advisable, in view of its importance, briefly to examine

[1] People *v.* Fields, 58 N. Y. 491 (1874); People *v.* Ingersoll, 58 N. Y. 1 (1874); *Church*, C. J., and *Rapallo*, J., dissenting. The English cases referred to in secs. 909 and 910 of this work, holding that the Attorney-General, on behalf of the crown, may resort to equity to prevent the abuse of corporate powers relating to property and funds, even if the doctrine of those cases prevailed in *New York*, which was not decided, were considered as distinguishable from the case before the court, as this *was a civil action for the recovery of money, which could only be brought by the owner*, and the owner was the corporation and not the State. The courts of *New York* had previously held, erroneously as we think, that the taxpayers, as such, were without remedy in such cases. *Post*, sec. 920. This condition of practical helplessness against fraud was remedied by the Acts of 1872 and 1881. Ayers *v.* Lawrence, 59 N. Y. 192; Metzger *v.* Attica & Arcade R. R. Co., 79 N. Y. 171; Osterhoudt *v.* Rigney, 98 N. Y. 222; *infra*, sec. 920, and note.

the doctrine above mentioned, and the grounds upon which it rests, in the light of some of the leading judgments of the courts, the better to see its scope, limitations, and application.[1]

[1] Equity has the power to restrain the collection of taxes, where fraud has occurred, or on proper case made, where the assessment or levy is without legal authority. *Infra*, secs. 923, 924, and cases; First Nat. Bank of Shawneetown *v.* Cook, 77 Ill. 622 (1875); Brandriff *v.* Harrison Co., 50 Iowa, 164; Dupage Co. Sup. *v.* Jenks, 65 Ill. 275; Riley *v.* Western Union Tel. Co., 47 Ind. 511 (1874); Lebanon *v.* O. & M. R. R. Co., 77 Ill. 539 (1875). *The doctrine* of the text was approved and applied by *Pardee*, J., in the case of the Liberty Bell, where the city of New Orleans was enjoined, at the suit of a taxpayer, from appropriating city funds to pay for the transportation of the old Liberty Bell from Philadelphia to New Orleans for a centennial exposition in the latter place. The learned judge well observed: — "Municipal corporations exhibit the highest patriotism in obeying the laws made for their government." The Liberty Bell (Bayle *v.* N. O.), 23 Fed. Rep. 843 (1885). See, also, Harrington *v.* Plainview, 27 Minn. 224; Willard *v.* Comstock, 58 Wis. 565; Lynch *v.* Eastern La. F. & M. Ry. Co., 57 Wis. 430 (to enjoin delivery of railway aid bonds); Robertson *v.* Breedlove, 61 Tex. 316 (restraining issue of bonds by a county); Richmond *v.* Crenshaw, 76 Va. 936, and cases cited; followed Shenandoah Valley R. R. Co. *v.* Clarke County, 78 Va. 269; Roper *v.* McWhorter, 77 Va. 214; Sackett *v.* New Albany, 88 Ind. 473; Butler *v.* Detroit, 43 Mich. 552; Scott *v.* Alexander, 23 S. C. 120 (aldermen required to pay the costs personally in an action restraining them from increasing the municipal debt beyond the statutory limit). The *municipal corporation* itself was held not to be entitled to invoke a court of equity to restrain the collection of a tax by State and county officers upon private property within its limits, though the tax was levied to pay its bonds alleged to be illegal. Waverly *v.* Auditor, 100 Ill. 354.

To entitle a party to relief in equity, *he must bring his case under some acknowledged head of equity jurisdiction;* the mere illegality of the tax without more, or the threat to sell property for its satisfaction, is generally held not to be sufficient, but the authorities on this point are not uniform, since some courts will, at the instance of the taxpayer, enjoin the collection of any tax or assessment that is admitted or clearly shown to be illegal or void. Dows *v.* Chicago, 11 Wall. 108; Hunnewinkle *v.* Georgetown, 15 Wall. 547; Ala. Gold L. Ins. Co. *v.* Lott, 54 Ala. 499; Montgomery *v.* Sayre, 65 Ala. 564; Lemont *v.* Singer, &c. Stone Co., 98 Ill. 94; Corrothers *v.* Clinton Dist. Bd. of Ed., 16 W. Va. 527; Mobile *v.* Baldwin, 57 Ala. 61; Sav. & L. Soc. *v.* Austin, 46 Cal. 415; Porter *v.* Rockford, R. I. & St. L. R. R. Co., 76 Ill. 561 (1875); Elkton Land Co. *v.* Ayers, 62 Ala. 413; C. B. & Q. R. R. Co. *v.* Siders, 88 Ill. 321; Columbia Co. Comm'rs *v.* Bryson, 13 Fla. 281 (1871); Floyd *v.* Gilbreath, 27 Ark. 675; Heywood *v.* Buffalo, 14 N. Y. 534; McDonald *v.* Murphree, 45 Miss. 705; Sayre *v.* Tompkins, 23 Mo. 443; Barrow *v.* Davis, 46 Mo. 394; U. P. R. R. *v.* Lincoln Co., 2 Dill. C. C. 297; Weaver *v.* State, 39 Ala. 535; Cook County *v.* Chicago, B. & Q. R. R. Co., 35 Ill. 460. But see *post*, secs. 923, 924; Williams *v.* Pinney, 25 Iowa, 436; Jeffersonville *v.* Patterson, 32 Ind. 140; Burnes *v.* Atchison, 2 Kan. 454; Warden *v.* Fond du Lac Co. Sup., 14 Wis. 618; and the payment of such portion as is alleged to be legal may be made a condition precedent to the granting of the relief sought. Deeflir *v.* Bowen, 61 Ind. 29. "The collection of a legal tax will not be restrained to prevent the enforcement of an illegal one." Covington *v.* Rockingham, 93 N. C. 134; London *v.* Wilmington, 78 N. C. 109; Stilz *v.* Indianapolis, 81 Ind. 582. See also High on Injunctions, sec. 498; more fully, *infra*, secs. 923, 924, and notes as to restraining the collection of illegal taxes. A resident cannot enjoin the collection of license tax for which he is liable, but a city may enjoin him from carrying on his

§ 915. **Same subject. Rationale of Doctrine; Author's View.** — The doctrine of the preceding section is also supported by an analogy supplied by a settled rule of equity applicable to private corporations. In these the ultimate *cestuis que trust* are the stockholders. In municipal corporations the *cestuis que trust* are in a substantial sense the inhabitants embraced within their limits. In each case the corporation, or its governing body, is a trustee. If the governing body of a private corporation is acting *ultra vires* or fraudulently, the corporation is ordinarily the proper party to prevent or redress the wrong by appropriate action or suit in the name of the corporation. But if the directors will not bring such an action, our jurisprudence is not so defective as to leave creditors or shareholders remediless, and either creditors or shareholders may institute the necessary suits to protect their respective rights, making the corporation and the directors defendants. This is a necessary and wholesome doctrine. Why should a different rule apply to a municipal corporation? If the property or funds of such a corporation be illegally or wrongfully interfered with, or its powers be

business until he pays it (New Orleans *v.* Becker, 31 La. An. 644), upon the ground that he might by appeals, &c., protract the litigation for a long period of time, and thus carry on his business without paying tax, and after tedious litigation there might be no property out of which to collect it. *Ib.*

The author directs attention to the decision below cited of the United States Supreme Court, as to the equitable conditions which should be met before a court of equity will enjoin the collection of taxes. State Railroad Tax Cases, 92 U. S. 575 (1875). Suggested distinction between enjoining local and municipal taxes and State taxes levied for general revenue. Parmley *v.* St. L., I. M. & S. R. R. Co., 3 Dillon, 25 (1874). Where a city had disregarded the forms prescribed in its charter for the letting of wharves and in not inviting competition by publication or otherwise, and had passed an ordinance authorizing a lease of wharves upon terms disadvantageous to itself and its inhabitants, the Supreme Court of Louisiana held that individual taxpayers suing for themselves, and others in a like situation, had a standing in court in an action to prevent the execution of the lease and to annul the ordinance. Handy *v.* New Orleans, 39 La. An. 107. To same effect Conery *v.* New Orleans Water Works Co., 39 La. An. 770. A city may be enjoined from selling land dedicated as a common, at the suit of an inhabitant whose individual rights as to his own property are threatened. Cummings *v.* St. Louis, 90 Mo. 259; see *ante*, chap. on Dedication. Where a city had reached the limit of indebtedness permitted by its charter, it was enjoined from carrying out a contract for its water supply which might have made it liable for a large increase. Davenport *v.* Kleinschmidt, 6 Mont. 502; see *ante*, chap. xiv. on effect of transcending the authorized limit of indebtedness; *infra*, sec. 919, note. The plaintiff in an action to contest the validity of an election authorizing the issue of county bonds for erecting public buildings, is not entitled merely upon his verified petition, as a matter of right, to a temporary injunction restraining the issue of the bonds. Johnson *v.* Wilson County, 34 Kan. 670; *supra*, sec. 912, note; *post*, sec. 919, note; Richmond *v.* Davis, 103 Ind. 449 (action to enjoin the unauthorized expenditure of corporate funds or making a bad investment of them). See *post*, secs. 919, 923, notes.

misused, ordinarily the action to prevent or redress the wrong should be brought by and in the name of the corporation. But if the officers of the corporation are parties to the wrong, or if they will not discharge their duty, why may not any inhabitant, and particularly any taxable inhabitant, be allowed to maintain in behalf of all similarly situated a class suit to prevent or avoid the illegal or wrongful act? Such a right is especially necessary in the case of municipal and public corporations, and if it be denied to exist, they are liable to be plundered, and the taxpayers and property-owners on whom the loss will eventually fall are without effectual remedy.

§ 916. **Same subject. Judgment of the Supreme Court of the United States.** — This doctrine has received, since the foregoing sections were written, the weighty sanction of the Supreme Court of the United States. It is said by Mr. Justice Field, in delivering the judgment of the court, that "of the right of resident taxpayers to invoke the interposition of a court of equity to prevent an illegal disposition of the moneys of the county, or the illegal creation of a debt which they, in common with other property-holders of the county, may otherwise be compelled to pay, there is at this day no serious question. The right has been recognized by the State courts in numerous cases; and from the nature of the powers exercised by municipal corporations, the great danger of their abuse, and the necessity of prompt action to prevent irremediable injuries, it would seem eminently proper for courts of equity to interfere, upon the application of the taxpayers of a county, to prevent the consummation of a wrong, when the officers of these corporations assume, in excess of their powers, to create burdens upon property-holders. Certainly, in the absence of legislation restricting the right to interfere in such cases to public officers of the State or county, there would seem to be *no substantial reason why a bill by or on behalf of individual taxpayers should not be entertained to prevent the misuse of corporate power*. The courts may be safely trusted to prevent the abuse of their process in such cases."[1]

[1] Crompton *v.* Zabriskie, 101 U. S. 601 (1879), *per Field*, J., approving text; followed in The Liberty Bell, 23 Fed. Rep. 843; noted *supra*, sec. 914, note; S. P. Normand *v.* Otoe Co. Comm'rs, 8 Neb. 18; Page *v.* Allen, 58 Pa. St. 338; Webster *v.* Harwinton, 32 Conn. 131; Oliver *v.* Keightley, 24 Ind. 514; Valparaiso *v.* Gardner, 97 Ind. 1 (1884); Terrett *v.* Sharon, 34 Conn. 105; Merrill *v.* Plainfield, 45 N. H. 126; Drake *v.* Phillips, 40 Ill. 388; Wade *v.* Richmond, 18 Gratt. (Va.) 583; Douglass *v.* Placerville, 18 Cal. 643; Stevens *v.* Rutland & B. R. R. Co., 29 Vt. 546; Gifford *v.* N. J. R. R. & T. Co., 10 N. J. Eq. 171; Baltimore *v.* Gill, 31 Md. 375; Hooper *v.* Ely, 46 Mo. 505. See, also, Patterson *v.* Bowes, 4 Grant (Can.), 170; West Gwillimbury *v.* Hamilton & N. W. R. R. Co., 23 Grant (Can.), 383; Cooley on Taxation, chap. xxiv.; 1 Pomeroy Eq. Juris. secs.

§ 917 (732). **Same subject. State Court Decisions; Connecticut.** — The Supreme Court of Connecticut, in holding that a *citizen and taxpayer* of an incorporated city *is entitled to an injunction to restrain an illegal or wrongful appropriation of the money of the city*, says in substance that this is so because the city corporation holds its moneys for the corporators, the inhabitants of the city, to be expended for legitimate corporate purposes; and a misappropriation of these funds is an injury to the taxpayer, for which no other remedy is so effectual or appropriate. If the money is taken out of the treasury, one person cannot well sue either the city or the person who receives the money for his proportion, and it is impracticable for all to unite in such a suit.[1] And when the amount thus misappropriated is subsequently needed for legitimate purposes, a citizen cannot resist the necessary tax to raise the same because the corporation had at a prior time misappropriated money.[2]

259–270. In *Iowa* a mere taxpayer cannot question the power of a city to grant an exclusive right to construct and operate water-works. Dodge *v.* Council Bluffs, 57 Iowa, 560; Grant *v.* Davenport, 36 Iowa, 396. *Ante*, chap. xviii.

The proper remedy against applying part of a city tax to payment of an indebtedness in excess of the constitutional limit is by an action to restrain, not its collection, but its misapplication. Strohm *v.* Iowa City, 47 Iowa, 42. A citizen and taxpayer held not to be entitled to enjoin a city council from entering into a contract to light the streets without showing that he would sustain injury by the proposed action. Searle *v.* Abraham, 73 Iowa, 507 (1887).

If county bonds are issued and placed in the hands of individuals for a railway company, before performance of the conditions upon which they were voted, they being improperly in such persons' hands, any disposition of them, except delivering them back to the county authorities, may be enjoined. Jackson Co. Sup. *v.* Brush, 77 Ill. 59 (1875).

[1] Washington *v.* Harvard, 8 Cush. (Mass.) 66 (1851); *post*, chap. xxiii. sec. 751.

[2] New London *v.* Brainard, 22 Conn. 552 (1853) (appropriating money to celebrate the Fourth of July). Approved, Harney *v.* Indianapolis, 32 Ind. 244; *ante*, sec. 149. Scofield *v.* Eighth School District (illegal use of school-house), 27 Conn. 499, 504, applying the same principle to the misappropriation of corporate property; Webster *v.* Harwinton, 32 Conn. 131; Terrett *v.* Sharon, 34 Conn. 105; Jacksonport *v.* Watson, 33 Ark. 704; The Liberty Bell, 23 Fed. Rep. 843; noted, *supra*, sec. 914, note; approving text.

Though money has been illegally voted by a city or town, and though the petitioners are entitled to resort to equity to restrain illegal appropriations, yet if they have been guilty of *gross laches*, and have knowingly permitted *third persons* to incur liabilities in good faith, relying upon such appropriation for reimbursement, an *injunction* will be denied. Tash *v.* Adams, 10 Cush. (Mass.) 252 (1852); S. P. Stewart *v.* Kalamazoo, 30 Mich. 69; People *v.* Maynard, 15 Mich. 463. But parties in whose favor the illegal vote was made, though they incurred expenditures on the faith of it, are not third persons in the meaning of the principle. Claflin *v.* Hopkinton, 4 Gray (Mass.), 502. Compare New London *v.* Brainard, *supra*; Hodges *v.* Buffalo, 2 Denio (N. Y.), 110. See Index, tit. *Ultra Vires*.

If an appropriation of money be made for *two objects*, *one lawful* and *the other not*, and it cannot be distinguished and separated, the whole will be held void; otherwise the court will enjoin or relieve against the expenditure which is unlawful. Roberts *v.* New York, 5 Abb. (N. Y.) Pr. R. 41; Howes *v.* Racine, 21 Wis.

§ 918 (733). **Same subject. Maryland Decision.** — The same doctrine has been expressly sanctioned by the Court of Appeals in Maryland, in a case in which it was held that residents and taxpayers of a city might file a bill in equity to restrain the corporation and its officers from taking steps to carry out a city ordinance creating a debt in violation of the Constitution.[1] Mr. Chief Justice Bartol, in giving the judgment of that tribunal, observed that "in this State the courts have always maintained with jealous vigilance the restraints and limitations imposed by law upon the exercise of power by municipal and other corporations. If the right to maintain such a bill as this be denied, citizens or property-holders would be without adequate remedy to prevent the injury which might result to them from the unauthorized or illegal acts of the municipal government or its officers and agents."

§ 919 (734). **Same subject. Decisions elsewhere.** — So elsewhere, and because that the remedy in equity is more direct, speedy, and effectual than by *certiorari*, it is held that equity will entertain jurisdiction of a bill on behalf of taxpayers *to enjoin the misapplication of the moneys* of the corporation. Based upon such considerations,[2] it has been well decided that one or more taxpayers,

514; Jacksonport *v.* Watson, 33 Ark. 704, approving text.

County supervisors cannot, without the aid of legislative authority, pay a debt, though meritorious if it had been legally contracted, which is not legally obligatory upon the county. People *v.* Stout, 23 Barb. 349. See *ante*, secs. 75, 454; *infra*, sec. 919.

[1] Baltimore *v.* Gill, 31 Md. 375, 395 (1869) (*ante*, sec. 130); approving New London *v.* Brainard, *supra*, and Merrill *v.* Plainfield, 45 N. H. 126; and disapproving Roosevelt *v.* Draper, 23 N. Y. 318, and Doolittle *v.* Broome Co. Sup., 18 N. Y. 155, mentioned below, sec. 920. See, also, in *Maryland*, Frederick *v.* Groshen, 20 Md. 436; Baltimore *v.* Porter, 18 Md. 284 (1861); Kelly *v.* Baltimore, 53 Md. 134; cited *infra*, sec. 922, note. See Coulson *v.* Portland, Deady, 481.

[2] Colton *v.* Hanchett, 13 Ill. 615; Place *v.* Providence, 12 R. I. 1, approving text; Mt. Carbon C. & R. R. Co. *v.* Blanchard, 54 Ill. 240 (1870); Sherlock *v.* Winnetka, 59 Ill. 389 (1871); Follmer *v.* Nuckolls Co. Comm'rs, 6 Neb. 204 (1877); Wade *v.* Richmond, 18 Gratt. 583 (1868); Harney *v.* Indianapolis, 32 Ind. 244; Madison *v.* Smith, 83 Ind. 502; Richmond *v.* Davis, 103 Ind. 449; *infra*, sec. 923. See, also, Sherman *v.* Carr, 8 R. I. 431 (1867); Newmeyer *v.* Mo. & Miss. R. R. Co., 52 Mo. 81 (1873); s. c. 14 Am. Rep. 394, and note, holding that a bill by *taxpayers of a county* in the name of themselves and all the other taxpayers of the county to *annul an illegal railroad subscription by the county court* was well brought, and that the State was not a necessary party. Any citizen and *taxpayer* may prevent the issue and sale of void bonds by a municipal corporation. Delaware Co. Comm'rs *v.* McClintock, 51 Ind. 325 (1875); Livingston Co. Sup. *v.* Weider, 64 Ill. 427 (1872); Allison *v.* Louisville, H. C. & W. Ry. Co., 9 Bush, 247 (1872); Bound *v.* Wis. Cent. R. R. Co., 45 Wis. 543; Wright *v.* Bishop, 88 Ill. 302; Cole *v.* Hanchett, 13 Ill. 615; Perry *v.* Kinnear, 42 Ill. 160; Marshall *v.* Silliman, 61 Ill. 218; Beauchamp *v.* Kankakee Co. Sup., 45 Ill. 274; Drake *v.* Phillips, 40 Ill. 392; Sherlock *v.* Win-

without showing any other injury than that which they will suffer in common with other property-holders of the municipality, may file a bill to restrain the allowance and payment of an illegal claim, or the collection of a tax for unauthorized objects, such as, for example, to pay a fraudulent or collusive judgment;[1] or to pay the expenses of a railroad survey which there was no power to make;[2] or to re-

netka, 59 Ill. 389; Chestnutwood *v.* Hood, 68 Ill. 132; Springfield *v.* Edwards, 84 Ill. 626. An act of the legislature authorizing a municipal corporation *to subscribe for stock in railroads*, and to issue bonds to pay for the same, does not authorize it to contribute to a railroad by indorsing its bonds; and upon the complaint of a taxpayer, or citizen of the corporation, a court of equity will enjoin such indorsement. Blake *v.* Macon, 53 Ga. 172 (1874). In a suit by taxpayers to enjoin collection of a tax in aid of a subscription to a railroad, it is error to admit the directors of the company as parties defendant. The company has no interest until the tax is collected. Jager *v.* Doherty, 61 Ind. 528.

The decisions in *Missouri* on the subject under consideration are reviewed and the result stated in an opinion of the Supreme Court of that State in the case of Ranney *v.* Bader in substance as follows: It was held, says the court, in the case of No. Mo. R. R. Co. *v.* Maguire, 49 Mo. 483, that when the property is liable to be taxed in any form, though irregularly assessed, the collector would not be liable to the taxpayer for the amount collected. In the case of Rubey *v.* Shain, 54 Mo. 207, it was held that when the assessment is illegal, or when it is based on the illegal act of the county court, the remedy of the taxpayer must be by a proceeding to arrest the execution of the illegal assessment and collection of the tax. This may be done by *certiorari*, under the authority of the cases of State *v.* St. Louis Co. Court and State *v.* Dowling, 50 Mo. 134. It may also be done under authority of Newmeyer *v.* Mo. & Miss. R. R. Co., 52 Mo. 81, by any taxpayer who may for himself, and on behalf of all other taxpayers similarly situated, bring a bill in equity to annul the illegal acts of county courts in respect to assessing and levying taxes. Wood *v.* Draper, 24 Barb. 187. In the State *v.* Saline Co. Court, 51 Mo. 350 it was held that *the State, through its Attorney-General*, or other proper law officer, might maintain a proceeding by injunction to restrain the imposition and collection of an illegal tax. It is said the above cases are not in strict accord with Deane *v.* Todd, 22 Mo. 90; Sayre *v.* Tompkins, 23 Mo. 443; Barrow *v.* Davis, 46 Mo. 394; Leslie *v.* St. Louis, 47 Mo. 478; Steines *v.* Franklin County, 48 Mo. 176, which assert the doctrine that courts of equity will not interfere by injunction to restrain the collection of an illegal and void tax. The distinct ground upon which the court based its conclusion was that in such cases courts of equity will not interfere, because there was a complete remedy afforded to the injured party by an action at law against the officer. There is, however, another ground of equitable jurisdiction which reconciles the conclusion reached in the cases of Newmeyer *v.* Railroad Co. and Rubey *v.* Shain, *supra*, with the cases above cited, viz., that equity will maintain jurisdiction to prevent multiplicity of suits; and no stronger case could be put for entertaining jurisdiction under this rule than is presented when one taxpayer, for himself and all other taxpayers of a township or county similarly interested, brings his bill, asking the chancellor to put forth restraining process to prevent the imposition and collection of an unauthorized tax, and thus settle in one suit what it would take hundreds, and perhaps thousands, to do if such relief were denied, and the parties subject to the payment of such tax were driven, each one, to his action at law for redress. Ranney *v.* Bader, 67 Mo. 476 (1878). See, *infra*, secs. 921, 924, note.

[1] Barr *v.* Deniston, 19 N. H. 170, 180 (1848). See, also, in the same State, Merrill *v.* Plainfield, 45 N. H. 126; *supra*, secs. 917, and notes, 918.

[2] Douglass *v.* Placerville, 18 Cal. 643.

fund to individuals money voluntarily contributed by them for the purpose of avoiding a draft in the town.[1]

§ 920 (735). **Same subject. New York Decisions.** — But on the other hand, it has been several times decided in New York that *resident citizens or taxpayers* of a municipal corporation cannot, as such merely, either on their own behalf or on behalf of themselves and all others having a like interest, maintain a suit to restrain or to avoid corporate acts alleged to be wrongful. The principle applicable to public nuisances is there adopted. Such wrongful acts are considered to affect the whole public; and the public, by its authorized public officers, must institute the proceeding to prevent or redress the wrongful act, unless a private person is threatened with or suffers some *peculiar* or *special* damage to his individual interest, — that is, some damage distinct from that of every other inhabitant, in which case he may maintain his bill for an injunction or for relief in his own name. Private persons may thus protect their own interests, but they cannot "assume to be the champions of the community, and in its behalf challenge the public officers to meet them in the courts of justice to defend their official acts." Therefore an illegal or wrongful alienation of property by a corporation, or an illegal or wrongful act which may or will result in increased taxation, cannot be questioned by a private person or taxpayer or property-owner, unless it be *specially* injurious to him.[2]

[1] Drake *v.* Phillips, 40 Ill. 388 (1866); *ante*, sec. 152; *supra*, secs. 914 and notes, 917, 918, and notes; *infra*, sec. 921. In *Tennessee* a bill in equity *by municipal taxpayers* without the Attorney-General lies to enjoin the *unauthorized issue of scrip to circulate as money*, or unauthorized promises to pay money at a future day. Colburn *v.* Chattanooga, 17 Am. L. Rep. N. S. 191.

In *Iowa* citizens and taxpayers may enjoin the expenditure of county moneys by the county officers in the erection of a court-house at a place not the county-seat of the county, the duty of interfering in such cases not being devolved on any public officer. Rice *v.* Smith, 9 Iowa, 570 (1859). See Grant *v.* Davenport, 36 Iowa, 396 (1873); Fleming *v.* Mershon, *Ib.* 413. Similar principles, Smith *v.* Magourich, 44 Ga. 163 (1871). A corporation will not be allowed to purchase property, in order by controlling it to compel a taxpayer to abandon or compromise his litigation with the municipality. Place *v.* Providence, 12 R. I. 1, citing text; s. p. State *v.* Marion Co. Comm'rs, 21 Kan. 419.

Where the indebtedness of a city exceeds the constitutional limitation of the percentum of the valuation of taxable property, the city will be enjoined from the levy and collection of a tax for the purpose of paying additional indebtedness incurred, before such levy, in violation of the Constitution. Howell *v.* Peoria, 90 Ill. 104, affirming Springfield *v.* Edwards, 84 Ill. 626, and Law *v.* People, 87 Ill. 395; *supra*, sec. 914, note; Valparaiso *v.* Gardner (unauthorized contract), 97 Ind. 1 (1884). Further on this point, see *ante*, chap. xiv.; Index, tit. *Limitation of Indebtedness.*

[2] This doctrine, left open in Ketchum *v.* Buffalo, 14 N. Y. 356 (1856), and 13 N. Y. 143, was first definitely adjudged in