

that in some way the defendant corporation has satisfied the claim of the plaintiff. The court doubtless has the power, upon proper cause shown, and upon being satisfied that the interests of all parties, including all the creditors, would be advanced by the dismissal of the bill, to permit its dismissal, even against the objection of one or more of the creditors; but no such cause has been shown. *Fay v. Bank, supra.*

It was suggested on argument that the possible effect of the joinder of Mr. Huckenstein and the foundry company as plaintiffs would be to oust the jurisdiction of the court, as they were citizens of Pennsylvania, the defendant being a corporation of Pennsylvania. That such would not be the effect was ruled in *Stewart v. Dunham*, 115 U. S. 61, 5 Sup. Ct. Rep. 1163, where it was held that, when a creditors' bill is properly removed from a state court to a circuit court of the United States on the ground that the controversy is wholly between citizens of different states, the jurisdiction of the latter court is not ousted by admitting in the circuit court as co-plaintiffs other creditors who are citizens of the same state as the defendant.

MARVIN v. C. AULTMAN & Co.

(Circuit Court, N. D. Ohio, E. D. June, 1891.)

FEDERAL COURTS—PRACTICE.

Inasmuch as the circuit court of the United States is vested with exclusive jurisdiction to try cases involving the validity of patents issued by the United States, the rule that the pleadings and practice shall conform to the practice in like cases in the state court does not apply, and in such a case the plaintiff cannot avail himself of the provisions of the Ohio statute (Code Ohio, §§ 5099-5101) by attaching to his petition interrogatories to be answered by defendant on pain of being defaulted, and thereby compel him to disclose testimony which is important in the trial of the cause.

At Law. On motion for judgment.

Marvin & Cook and *Charles S. Cairns*, for plaintiff.

Wm. A. Lynch and *Charles R. Miller*, for defendant.

JACKSON and RICKS, JJ. This is a motion for judgment herein against the defendant by default for failure to answer the interrogatories annexed to the petition of the plaintiff filed herein, as required by law. This is an action on the case under section 4919 of the Revised Statutes of the United States. The petition filed in this case is prepared in accordance with the Code of Ohio. Section 5099 of the Revised Statutes of Ohio provides that "a party may annex to his pleading, other than a demurrer, interrogatories pertinent to the issue made in the pleadings; which interrogatories, if not demurred to, shall be plainly and fully answered under oath, by the party to whom they are propounded, or, if such party is a corporation, by the president, secretary, or other officer thereof, as the party propounding requires." Section 5100 provides:

"When annexed to the petition, the interrogatories shall be answered within the time limited for answer to the petition." Section 5101 provides: "Answers to interrogatories may be enforced by nonsuit, judgment by default, or by attachment, as the justice of the case may require; and, on the trial, such answers, so far as they contain competent testimony on the issue or issues made, may be used by either party." The interrogatories propounded and annexed to the petition call for facts from the officers of the defendant corporation as to the number of patented devices made under the letters patent attached to the petition; how many were sold during the period from 1883 to 1890, the period covered by the alleged infringement; and other matters relating to their manufacture and sale pertinent to the issue made by the pleadings in this case. The defendant declines to answer said interrogatories, and claims that, under the practice of the courts of the United States in such cases, it cannot be compelled to make answers thereto. This presents the question as to whether the pleadings in an action of this kind, and the trial of the cause, shall conform to the pleadings and practice in law cases under the Ohio Code, or whether such pleadings and practice are specially provided for by the Revised Statutes of the United States. We think that, inasmuch as the circuit court of the United States is vested with exclusive jurisdiction to try cases involving the validity of patents issued by the United States, it cannot be said that there are "like causes" in the courts of the several states to which the practice, pleadings, forms, and mode of proceedings shall conform. It is not material whether the declaration is called a "petition" or a "declaration," nor is it very important as to the precise form in which it is expressed; but it should contain all the essential averments that are prescribed for a declaration in an action on the case under the common-law form of pleading, because that was supposed to be in the mind of congress when section 4919 was enacted. The petition in this case contains all such essential averments, and is therefore a good petition; but we do not think the plaintiff has the right to avail himself of the provisions of the Ohio statute in attaching to his petition interrogatories, and thereby compel the defendant to disclose testimony which is important in the trial of the cause. The statutes of the United States specifically provide how testimony in actions of this kind may be secured and offered in the courts of the United States. Those provisions of the statute are ample, and give the plaintiff the benefit of all the evidence which he seeks to obtain by the interrogatories attached to his petition. The motion for judgment is denied, but an order may be entered allowing the plaintiff a *sub-pœna duces tecum* requiring the defendant to produce the correspondence, books, and records of the corporation, as provided by the statutes of the United States. The case of *Myers v. Cunningham*, 44 Fed. Rep. 346, (decided by the district judge for this district at the June term of this court, 1890, held in Toledo,) has been examined, and is approved by the circuit judge.

SMITH v. BOARD OF COUNTY COMMISSIONERS OF CARLTON COUNTY.

(Circuit Court, D. Minnesota, Fifth Division. May 12, 1891.)

COUNTIES—LIABILITY FOR TORTS.

Plaintiff, the employe of an independent contractor, engaged in building a bridge on a county road, was injured by the negligent explosion of a charge of dynamite by the agents of defendant county while blasting and building an approach to the bridge. Held, in an action for damages, that counties are not liable for the torts of their officers acting within the line of their authority, unless made so by statute.

At Law. On demurrer to complaint.

Arctander & Arctander, for plaintiff.

Alpheus Woodward, Co. Atty., for defendant.

NELSON, J. The complaint in substance charges that on January 24, 1889, the plaintiff was an employe of an independent contractor of defendant, then engaged in building a bridge in Carlton county; that it was plaintiff's duty to carry lumber on to the bridge, and, while so engaged, the defendant fired a charge of dynamite while blasting and building an approach to said bridge, without notice or warning, and in such dangerous and careless manner, as, by reason thereof, to cause a rock to fly from such blast, and injure the plaintiff. The complaint is predicated upon a negligent affirmative act on the part of the defendant in making a careless blast while engaged in building a bridge or the approaches thereto on a county road in Carlton county, whereby plaintiff was injured without his fault. The weight of authority is against the position taken by the plaintiff in bringing this suit. While the cases are conflicting, and there are difficulties in the way of maintaining the distinctions made, the prevailing rule is that counties are under no liability in respect to torts except as imposed by statute, and are not liable for damages occasioned by reason of the negligence of the county commissioners themselves, or the negligence of persons employed by them to aid in the discharge of official duties. The supreme court of Minnesota is emphatic in sustaining the rule that the counties are subordinate political subdivisions of the state, and the county officers public officials performing their duties under the authority of the state; and, being subdivisions of the state, created for certain political and administrative purposes, are not liable for tort of their officers acting within the line of their authority, unless made so by statute. *Dosdall v. Olmsted Co.*, 30 Minn. 96, 14 N. W. Rep. 458. There is no state law imposing liability, as claimed by the plaintiff. In the state of Ohio the same view is entertained in an able and elaborate opinion by the supreme court. *Hamilton Co. v. Mighels*, 7 Ohio St. 109. The injury complained of was the result of the negligence of the county commissioners in the discharge of a public duty. Demurrer sustained.