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.

HYER v. CHAMBERLAIN.

(*Circuit Court, D. South Carolina.* May 22, 1891.)

RAILROAD—STOCK-KILLING—EVIDENCE.

It is not negligence for a railroad company to leave a train of freight-cars standing on a siding near a crossing, provided the crossing itself is kept unobstructed, and the fact that a mule wandering up the track from the crossing was concealed by the freight-cars from the engineer of a rapidly approaching train until it came around the end of the freight-cars onto the main track at so little distance that it was impossible to stop the train before the mule was struck, will not render the company liable therefor.

At Law.

Simeon Hyde, for plaintiff.

Brawley & Barnwell, for defendant.

SIMONTON, J. This is a claim against the receiver, for the value of a mule killed upon the track of the South Carolina Railway by one of its locomotives. Both parties submit the matter to the court. The mule was killed about 290 feet from Sineaths station. At this station are four tracks, laid on lands owned by the railway company in fee. The residence of the plaintiff, consisting of a tract of land, dwelling-house, and store, is to the west of the track. From it leads a public road crossing the railroad track at Sineaths. On the day of the accident there was on each of the side tracks nearest to plaintiff's premises a train of box-cars. They were below the crossing, which had been left entirely unobstructed. The locomotive which killed the mule was on the main track. Between it and the box-cars on the side track was a space of four or five feet. As the mule was killed by the locomotive of defendant, the law presumes negligence, and this presumption must be rebutted. *Danner* v. *Railroad Co.*, 4 Rich. Law, 329; *Fuller* v. *Railway Co.*, 24 S. C. 133. The only eye-witness of the accident was the engineer in charge of the locomotive. He had been in service for 30 years. He says that he was in charge of the passenger train, about an hour behind time, running at the rate of 35 miles an hour, with 4 coaches, including the baggage-car; that after he had passed the crossing at Sineaths he saw the mule coming from behind the train of cars on the siding, and on the track, about 35 feet ahead of him; that he could not possibly have stopped his train, nor do anything except open his connections with the whistle and blow; that he struck the mule, and no doubt killed it. He admits that his engine had become disabled on one side, but swears that with every appliance in order he could not have stopped under 250 yards, at the rate of speed he was under, and with such a train. If the disabled condition of the engine did not contribute to the accident, the defendant cannot be held liable for that. *Simms* v. *Railroad Co.*, 26 S. C. 495, 2 S. E. Rep. 486. To rebut this testimony the plaintiff proved that there were seen tracks of the mule from the premises of plaintiff to the railroad crossing, and from the crossing, between the main track and the siding, up to the point where it was killed. The plaintiff claims that under these circum-