

DOOLITTLE v. WALPOLE.

A town is not liable to an action not authorized by statute.

The provision of an unsuitable lock-up by selectmen for the temporary detention of offenders is not a breach of any duty of the town.

CASE. The declaration alleged, in substance, that the defendants erected and maintained, in an unsuitable condition, a lock-up for the keeping and detention of prisoners; that the plaintiff was arrested, and for twenty-four hours was confined in the lock-up, and by reason of its unsuitable condition was injured. The defendant's demurrer was sustained, and the plaintiff excepted.

Don H. Woodward, for the plaintiff.

Josiah G. Bellows, for the defendants.

BLODGETT, J. "In its own courts a state cannot be made an involuntary defendant. It is not constitutionally bound to give to its school-teachers, to those who support its paupers, lend it money, sell it real or personal property, or make and repair its roads and buildings, to travellers injured by defects in its highways, or to any class of contractors, creditors, or claimants, a right of action, civil or criminal, against itself." *Wooster v. Plymouth*, 62 N. H. 193, 205; *Sargent v. Gilford*, 66 N. H. 543, 544. Towns are "only political subdivisions of the state, made for the convenient administration of the government. . . . They are component parts of the state, and aggregately taken are the state." *Id.* 208. Constituting a portion of the sovereign power of the state, a municipal corporation is, therefore, not subject to an action, unless a right of action is conferred by statute in the exercise of the entire control over municipalities with which the legislature is invested by the constitution (*id.*); and there being no express statute authorizing the plaintiff's action, nor any from which authority can be implied, the defendant town is, for the purpose of the present inquiry, no less a sovereign than the state.

But aside from this fatal objection, the plaintiff alleges no duty on the part of the defendants towards him which was unfulfilled. The injuries of which he complains arose from the misfeasance and neglect of duty of independent public officers in the performance of their statutory duty as selectmen to "provide a suitable lock-up for the temporary detention of offenders" (P. S., c. 226, s. 3); and the uniformly recognized doctrine is, that the acts of such officers are their own official acts, and not the acts of the municipal corporation or its agents. *Edgerly v. Concord*, 62 N. H. 8, 18, 19, and authorities cited; *Wakefield v. Newport*, 62 N. H. 624, 625. And even if the statute imposed the duty to provide a suitable lock-up upon the town, the duty being one for the ben-

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efit of the public, and from the performance of which the town receives no corporate benefit or advantage, the plaintiff's action, in the absence of a statute giving it, could not be maintained. Authorities *supra*.

Exception overruled.

CARPENTER, J., did not sit: the others concurred.

CHICKERING v. LORD.

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One who drives a skittish horse in an unsafe carriage is not thereby precluded from recovering damages for an injury caused by the frightening of the horse.

DEBT, on the statute for double damages, for injuries committed by the defendant's dogs. Verdict for the plaintiff. July 11, 1892, while the plaintiff was riding in a sulky drawn by a three-year-old colt, in the highway leading by the defendant's house, the colt became frightened and unmanageable, and ran away, whereby he and the colt were injured and his sulky and harness damaged. His evidence tended to show that the fright of the colt and the consequent injuries were caused by the defendant's dogs' barking at and biting the colt.

The defendant introduced evidence tending to show that the fright of the colt was not caused by the dogs; that the colt was skittish, unsafe, and took fright at some unknown object; that the action of the dogs was caused by its running, kicking, and plunging, and the plaintiff's calls of "Whoa," and that the sulky was not a safe carriage. There was no other evidence tending to show that the plaintiff did anything to excite the dogs, or to cause them to run after, bark at, or bite the colt. The jury were instructed (among other things) to return a verdict for the defendant, unless they found that the fright of the colt and the plaintiff's injury were caused by the dogs. The defendant requested the court to instruct the jury that "As a rule, one cannot recover compensation for an injury occasioned by mere neglect of another, which he might have avoided by the exercise of reasonable care; and this doctrine applies the same in connection with cases in reference to damages occasioned by dogs, as in other cases of damages." The instruction was refused on the ground that it was not called for by the evidence, and the defendant excepted.

Batchelder & Faulkner, for the defendant. The request was, in substance, to instruct the jury that the law of contributory negligence is applicable to cases brought to recover damages for injuries occasioned by dogs, as to other cases. It was asking the