

## GRAY v. BATESVILLE.

Opinion delivered March 18, 1905.

1. MUNICIPAL CORPORATION—DEFECTIVE HIGHWAY—DAMAGES.—A city is not liable for damages growing out of its failure to repair a defective bridge in a street within its limits. (Page 520.)
2. SAME—LIABILITY OF OFFICERS.—The mayor and members of a city council are not liable for failure to repair a defective bridge within the city limits. (Page 520.)

Appeal from Independence Circuit Court.

FREDERICK D. FULKERSON, Judge.

Affirmed.

## STATEMENT BY THE COURT.

Action by John H. Gray against the city of Batesville, and the mayor and members of the city council, for damages caused from a defective bridge within the city limits which had been permitted to fall into disrepair and which the city had negligently failed to repair. The trial court instructed the jury to return a verdict for the defendant, which was done. Judgment was rendered accordingly, and the plaintiff appealed to this court.

*Yancey & Casey* and *Morris M. Cohn*, for appellant.

The city of Batesville is liable. Kirby's Dig. § 5530; 58 Ark.

494; Elliott, Roads and Streets, 45; 1 Dill. Mun. Corp. § § 28, 576; 62 Ark. 7; 34 Ark. 246; 58 Ark. 348; 61 Ark. 397; 29 Ark. 569; 64 Ark. 240; 45 Conn. 550; 8 Mich. 534; 29 Ill. App. 117; 84 Hun, 281; 115 N. C. 182; 30 Wis. 365; 2 Wood, Nuisances, 749; 30 Wis. 365. The other defendants are also liable. 37 Hun, 360; Mechem, Pub. Off. § 701; 90 Am. Dec. 731; 51 Fed. 646; 68 Pa. St. 407; 157 Mass. 277; 120 Mass. 352; 52 Ark. 541; 58 Ark. 270.

*Oldfield & Cole*, for appellees.

Appellees are not liable. 27 Ark. 572; 34 Ark. 105; 49 Ark. 130; 52 Ark. 84; 84 S. W. 480; Kirby's Dig. § § 548, 555; 21 L. R. A. 377; 27 L. R. A. 572; 135 U. S. 492; 43 Am. Rep. 655; 23 Am. & Eng. Enc. Law, 377; 61 Ark. 497; 43 Ark. 297; 54 Ark. 289; 56 Ark. 594; 2 Enc. Pl. & Pr. 500; 2 Cyc. 631.

McCULLOCH, J., (after stating the facts.) This case, as to the question of liability of the city, falls squarely within the rule announced in *Collier v. Ft. Smith*, 73 Ark. 447; *Ft. Smith v. York*, 52 Ark. 841, and *Arkadelphia v. Windham*, 49 Ark. 139, and is controlled by them.

Now, are the mayor or members of the city council liable for a failure to repair the bridge? Officers or members of municipal bodies, charged with discretionary duties and powers with reference to public improvements, are *quasi-judicial* officers to that extent, and are not liable to damages for the improper exercise of those discretionary powers. *Lee v. Huff*, 61 Ark. 494; 23 Am. & Eng. Enc. Law, pp. 376, 377; *Pawlowski v. Jenks*; 115 Mich. 275; *Fath v. Koepfel*, 72 Wis. 289; *Smith v. Gould*, 61 Wis. 31; *Hannon v. Grizzard*, 96 N. C. 293; *Daniels v. Hathaway*, 65 Vt. 247.

Judgment affirmed.

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