

JUDGMENT

Thomas Kidd, et al. vs City of Atlanta, et al.

January 4, 1963

JK

The question in this case is whether the territory in question is a public street. If it is not a public street, then, of course, an obstruction would not be a nuisance. Now, the evidence shows that there are two ordinances passed by the Mayor and Board of Aldermen closing the streets in question. 154 Ga. page 556 Lee County vs the Mayor of Smithville et al., says in part. "The State, through its legislature, has as much power and control over the laying out, construction, maintenance, in closing of the highways, streets, lanes, and alleys of the municipal corporation as it has over other public highways. It may change, alter, abolish either class of these highways at will. The power to have opened, worked, repaired, improved, or closed the public highways, streets, and roads may be exercised by the legislature in such manner and way, and under such circumstances, as it may deem best. There is no constitutional or other limitation on this power in this particular matter.... The legislature, can, of course, delegate this power to local, inferior bodies, or it can exercise it through its own agencies.... It may exercise this power directly, or may delegate it to municipalities, the counties of the state, or to any other constituted body." Therefore, there is no question, but that the City of Atlanta has the power under its charter to close streets.

209 Georgia 763 Jenkins vs Jones, "Generally, a municipal ordinance passed in pursuance of express legislative authority is a law within the meaning of the constitution, and has the same effect as a local law duly enacted by the State Legislature."

Allegations were made during the trial by the plaintiff as to the motives of the Mayor and Aldermanic board in passing the two ordinances closing said street. In 164 Ga. page 541 Klein et al. vs City of Atlanta, it was held as follows:

"The courts cannot inquire into the motive of the defendants in pressing and procuring the enactment of this ordinance, or of the mayor and general council of Atlanta in enacting the same...." It thus appears to me that the City of Atlanta through its legislative body, has closed the streets in question and that until this action is set aside in some manner recognized by law, this court is bound by the ordinances adopted. There is, also, a question whether this court would have jurisdiction to set them aside in any event.

There is another question that bothers this court. The present petition alleges that this nuisance is a public nuisance and the evidence seems to support that allegation. It further appears that the present plaintiffs have suffered no injury, if any, not suffered by the public at large, and the court understands the law to be that, where a nuisance is a public one, and, where the plaintiff suffers no personal injury beyond that suffered by the public at large, only the public authorities, acting through the Solicitor General can maintain a petition to abate the nuisance. At least, private parties cannot do so.

For all of the foregoing reasons the court is of the opinion and hereby rules, that the present petition must be and is hereby dismissed.

R. E. Jones
Robert E. Jones, Judge
MUNICIPAL COURT, GENERAL DIVISION
City of Atlanta