AMERICAN CONSTITUTIONALISM

VOLUME II: RIGHTS AND LIBERTIES

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Supplementary Material

Chapter 7: The Republican Era – Individual Rights/Property/Due Process

**Sings v. City of Joliet, 237 Ill. 300 (IL 1908)**

*In 1901, the city of Joliet, Illinois, passed an ordinance that declared a tenement building to be a public nuisance due to its being occupied “by a large number of persons, all of whom are more or less exposed to, infected by and suffering with the dread contagious and infectious disease known as smallpox.” The city council directed the health commissioner to immediately remove all the occupants and isolate them at a city facility and then to tear down and burn the apartment building and all of its contents. Without notice, judicial hearing, or compensation to the owners or residents, the city did just that.*

*In 1906, the owners of the building and the residents who had been displaced filed suit in state court seeking damages for their lost property. The trial court dismissed the suit, and they appealed to the state supreme court. The state supreme court unanimously reversed the judgment of the trial court and remanded the case for further hearings. The court affirmed that the city had the constitutional power to declare the building a public nuisance and order its destruction without a judicial hearing as an emergency public health measure, but the court held that the city could be held financially liable after the fact it had made an error in its declaration or had not taken reasonable measures to abate the nuisance.*

Judge [SCOTT](https://1.next.westlaw.com/Link/Document/FullText?findType=h&pubNum=176284&cite=0183411701&originatingDoc=I215b0bc634f411e9bc5c825c4b9add2e&refType=RQ&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)&analyticGuid=I215b0bc634f411e9bc5c825c4b9add2e).

. . . .

Section 2 of article 2 of the Constitution of the state provides that no person shall be deprived of property without due process of law. Plaintiffs in error insist that, when that clause is given proper meaning, it appears therefrom that the city was without lawful authority to pass the ordinance. . . . By the [city charter] the council is authorized to do all acts and make all regulations necessary or expedient for the promotion of health or the suppression of disease. The position of the city is that it had authority to do everything charged against it by the declaration under and by virtue of its general police power.

Plaintiffs in error first object that the city was without power to pass an ordinance which had application only to the property involved in this suit; that the power given to declare a nuisance must be exercised by an ordinance general in its character, operating uniformly upon all persons and upon all property of the same character within the city. While the precise steps necessary to be taken by the city in declaring a thing to be a nuisance have never been pointed out by this court, we are of opinion that the city, in the exercise of its police power, if the emergency existed, as it appears to have existed from the recitals of the ordinance, had the power to declare the existence of the nuisance by the ordinance which it passed, provided the location and condition of the building were such that the method ordained was the only one which could in reason be used that would be effective in preventing the spread of the disease. Many cases can readily be imagined in which the city must proceed in a manner exceedingly summary both to declare and to abate a nuisance, and in such case the passage of an ordinance such as that here involved would seem to be a declaration sufficiently formal.

It is then said that the power of the city to declare what shall be a nuisance is not an arbitrary one. To that proposition there can be no dissent. In the case of *Laugel v. City of Bushnell* (IL 1902), it is said: “Nuisances may thus be classified: First, those which in their nature are nuisances per se or are so denounced by the common law or by statute; second, those which in their nature are not nuisances, but may become so by reason of their locality, surroundings, or the manner in which they may be conducted, managed, etc.; third, those which in their nature may be nuisances, but as to which there may be honest differences of opinion in impartial minds.” It is apparent that, if the building in this case was a nuisance, it fell within the second classification, and the city had the power to declare it to be a nuisance if it was in fact so. If the conditions recited in the ordinance existed, and if the building was so located as that persons in the city could not by the city authorities, in the exercise of reasonable precaution, be excluded from the building or prevented from approaching so near thereunto as to be in danger of contagion therefrom, if would appear that the building was, in fact, a nuisance and that it might lawfully be abated.

It is next insisted that, before the property was actually destroyed, the owners thereof were entitled to have a day in court, where the question whether the property was, in fact, a nuisance might be adjudicated before the building was destroyed. In the exercise of the police power the command ‘so use your own property as not to injure others,’ and the maxim ‘the safety of the people is the supreme law,’ are to be observed and given effect. *City of Chicago v. Gunning System* (IL 1905). If in every emergency the owner of the property the destruction of which is deemed necessary must be given a hearing, the exercise of the police power would in many instances be so delayed that serious injury to public health and other public interests would result. . . .

Plaintiffs in error next argue that even if the city had the power to pass the ordinance, and to proceed in the summary manner in which it did, they are entitled to maintain this suit and test the question whether or not the property was, in fact, a nuisance. . . . [T]o declare and abate a nuisance is within the scope of the power conferred upon the city, and if the council, in the exercise of that power, destroys or expressly authorizes the destruction of property which, in fact, is not a nuisance, the municipality must be held liable for damages sustained by the owner. The city was not justified in destroying this property unless the statement of alleged facts contained in the ordinance was true, and then only if the property was so located and in such condition that the danger to public health therefrom could not be obviated by the use of some reasonable measures less drastic than the absolute destruction of the property.

*Reversed*.