

Supreme Court,  
Judges Chambers,  
New York, May 11<sup>th</sup> 1896

Hon. Wm. L. Strong  
Mayor of New York  
Dear Sir

In regard to the  
Act now before you amending  
Section 1367 of the Consolidation  
Act respecting District Courts,  
I beg leave to say that a copy  
of the proposed Amendment has  
been submitted to the Justices  
of the Appellate Term (which  
reviews the decisions in the  
District Courts) and they see  
no objection to the measure. It  
seems to me that it confers powers  
upon the District Court Justices  
which can be used in the  
furtherance of justice.

Very truly yours,  
J. F. Daly

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# The People of the State of New York

To the Sheriff of the County of Suffolk GREETING:

Whereas judgment was rendered on the 7th day of July one thousand eight hundred and ninety seven in an action in the Supreme Court

between The Bradley Packing Company plaintiff and Edmund C. Phillips and William V. Randall defendant

in favor of the said plaintiff against the said defendants for the sum of \$121.24

as appears to us by the Judgment Roll, filed in the office of the Clerk of the City and County of New York and whereas the said judgment was docketed in the office of the Clerk of your County on the 8th day of July in the year one thousand eight hundred and ninety seven and the sum of \$121.24

is now actually due thereon:

Therefore, we Command you, That you satisfy the said judgment out of the personal property of the said judgment debtors within your County; or if sufficient personal property cannot be found, then out of the real property in your County belonging to such judgment debtors at the time when the said judgment was so docketed in the office of the Clerk of your County, or at any time thereafter, in whose hands soever the same may be, and return this execution, within sixty days after its receipt by you, to the Clerk of the City and County of New York

Witness Hon. Charles H. Van Brunt Presiding Justice of said Court at New York N.Y. the 8th day of July one thousand eight hundred and ninety seven

ALEXANDER BROUGH,

ATTORNEY for Plff

150 NASSAU STREET,  
NEW YORK CITY.

Alexander Brough  
Plaintiff's Attorney

Supreme Court  
New York County  
The Seedling  
Packing Co.

vs

Edmund C. Phillips  
vs William A. Randall  
V. B. Jones

## Execution

Against the Property.

Sheriff of the County of Suffolk  
Levy and collect as within directed  
\$121.<sup>54</sup>/<sub>100</sub>

with interest from the 7<sup>th</sup> day  
of July 1897  
besides your fees, &c.

Alex. Brangle

Plff's Att'y  
150 Nassau St. N.Y. City  
Received July 8<sup>th</sup> 1897  
at 9. A. M.  
Bert B. Ward Sheriff.

Willa Boring  
Jury D. Ward  
SHERIFF of Suffolk Co. N.Y.

Defts address  
Goodman L. S.



# The People of the State of New York

To the Sheriff of the \_\_\_\_\_ County of Suffolk GREETING :  
**Whereas** judgment was rendered on the 2<sup>8<sup>th</sup></sup> day of May one  
 thousand eight hundred and ninety six in an action in the City Court of New York  
 between Wilhelmina Van Gilder  
 plaintiff  
 and Henrietta Frick  
 defendant

in favor of the said Wilhelmina Van Gilder  
 against the said Henrietta Frick  
 for the sum of Two Thousand Three Hundred Ninety Eight & 7/100 (\$2398.70) Dollars  
 as appears to us by the Judgment Roll, filed in the office of the Clerk of said City Court of New York  
 County of \_\_\_\_\_ **And whereas** the said judgment was docketed in  
 the office of the Clerk of your County on the 25<sup>th</sup> day of June in the year  
 one thousand eight hundred and ninety six and the sum of Two Thousand Three  
Hundred Ninety Eight & 7/100 (\$2398.70) Dollars  
 is now actually due thereon :

**Therefore, we Command you,** That you satisfy the said judgment out of the personal property  
 of the said judgment debtor within your County ; or if sufficient personal property cannot be found, then  
 out of the real property in your County belonging to such judgment debtor at the time when the said  
 judgment was so docketed in the office of the Clerk of your County, or at any time thereafter, in whose  
 hands soever the same may be, and return this execution, within sixty days after its receipt by you, to the  
 Clerk of the City Court of New York County of the City of New York  
**Witness** Hon. Robert A. Van Hook Chief Justice of said Court  
 at the James Home City Hall City of New York the 28<sup>th</sup> day  
 of July one thousand eight hundred and ninety seven

John G. Miller  
 Plaintiff's Attorney

Kulla Bona

Jay. D. Wood

SHERIFF of Suffolk Co. N.Y.

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City Court N.Y. County

Wilhelmina Van Gilder  
Plaintiff

Henrietta Lister  
Defendant

Subscribed

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## Execution

Against the Property.

Sheriff of \_\_\_\_\_ County of \_\_\_\_\_

Levy and collect as within directed \_\_\_\_\_

with interest from the \_\_\_\_\_ day  
of \_\_\_\_\_ 189 \_\_\_\_\_

besides your fees, &c.

Plff's Att'y

Received Aug 5<sup>th</sup> 1897

Benj. B. Wood Sheriff.

By Otho R. Fothergill  
his deputy

## The People of the State of New York,

To the Sheriff of the \_\_\_\_\_ County of Suffolk GREETING:Whereas judgment was rendered on the 25<sup>th</sup> day of September one New York  
thousand eight hundred and ninety five in an action in the Supreme Court of the State ofbetween Edward P. Hatch plaintiffand William H. H. Glover defendantin favor of the said plaintiffagainst the said defendantfor the sum of six hundred & four 57/100 dollars

as appears to us by the Judgment Roll, filed in the office of the Clerk of the

City & County of New York And whereas the said judgment was docketed in yourCounty on the 10<sup>th</sup> day of September in the year one thousand eight hundredand ninety seven and the sum of \$604.57\_\_\_\_\_ is now actually due thereon: Therefore, we Command you,  
that you satisfy the said judgment out of the personal property of the said judgment debtor within  
your County; or if sufficient personal property cannot be found, then out of the real property in your  
County belonging to such judgment debtor on the day when the said judgment was so  
docketed in your County, or at any time thereafter, in whose hands soever the same may be,  
and return this execution within sixty days after its receipt by you, to the Clerk of the \_\_\_\_\_City & County of New YorkWitness Hon. Henry A. Gildersleeve, a Justice of said Courtat the County Court House New York City the 10<sup>th</sup> dayof September one thousand eight hundred and ninety sevenHenry Tompkins Plaintiff's Atty  
156 5. Avenue New York



*Nulla Bona*

*Deu. D. And*

SHERIFF of Suffolk Co. N.Y.

see about 3 -  
72 pag -242 -  
N.Y. Supreme Court

*Edward P. Hatch*

against

*William H. H. Glover*

Execution against the Property.

Sheriff of \_\_\_\_\_ County of *Suffolk*  
Levy and collect *\$604.57*

with interest from the *25th* day  
of *September* 18 *95*

besides your fees, &c.

*Henry Tompkins*  
Plff's Att'y  
*156 5. Ave. New York*  
Received *Sept 10* 18 *97*

*Wm. H. H. Glover* Sheriff.  
*Southold* 72  
*L. I. N.Y.*



Execution against the Property.

No. 9a.

W. Reid Gould, Law Blank Publisher and Stationer, 139 Nassau Street,  
cor. of Beekman, and 120 Broadway, New York.

# The People of the State of New York,

To the Sheriff of the

County of Suffolk

GREETING:

Whereas judgment was rendered on the

25<sup>th</sup>

day of September one

New York

thousand eight hundred and ninety five in an action in the Supreme Court of the State of

between

Edward P. Hatch

plaintiff

and

William H. H. Glover & Henriette Frisk

defendants

in favor of the said

plaintiff

against the said

defendants

for the sum of one thousand four hundred & seventy eight 78/100 dollars

as appears to us by the Judgment Roll, filed in the office of the Clerk of the

City & County of New York

And whereas the said judgment was docketed in your

County on the 10<sup>th</sup> day of September in the year one thousand eight hundred

and ninety seven and the sum of \$1478.78

is now actually due thereon: Therefore, we Command you, that you satisfy the said judgment out of the personal property of the said judgment debtors within your County; or if sufficient personal property cannot be found, then out of the real property in your County belonging to such judgment debtors on the day when the said judgment was so docketed in your County, or at any time thereafter, in whose hands soever the same may be, and return this execution within sixty days after its receipt by you, to the Clerk of the

City & County of New York

Witness Hon. Henry A. Gildersleeve a Justice of said Court at the County Court House, New York City the 10<sup>th</sup> day of September one thousand eight hundred and ninety seven

Henry Tompkins Plaintiff's Atty  
156 5. Avenue, New York

*Kulla Bma*  
*Dej. D. Ward*  
SHERIFF of Suffolk Co. N.Y.

see about 3-  
72 Paid 241-  
N. Y. Supreme Court

*Edward P. Hatch*

*Q* against

*William H. H. Glover &*  
*Henriette Fisk*

Execution against the Property.

Sheriff of ..... County of *Suffolk*  
Levy and collect. *\$1478.78*

with interest from the *25<sup>th</sup>* day  
of *September 1895*

besides your fees, &c.

*Henry Tompkins*  
Plff's Att'y  
*156 5. Ave. New York*

Received *Sept 10, 1897* 18

*Ben B. Ward* Sheriff.  
*Wm. H. H. Glover &*  
*Henriette Fisk,*  
*Southold,*  
*L. I., N.Y.*



Copy —

THE PEOPLE OF THE STATE OF NEW YORK

to

The Mayor, Aldermen & Commonalty of the City of New York; Charles H.T. Collis, as Commissioner of Public Works; and William Henkel, as Superintendant of Incumbrances.

- - -

W H E R E A S, it has been represented to us by Philip Bohnet, a citizen of the City, County and State of New York, and a resident of said County, and a taxpayer thereof assessed for and liable to pay, and who within one year before the commencement of this proceeding has paid as taxes thereon, the sum of whose assessment amounts to upwards of One thousand dollars, and as such citizen and taxpayer interested in the subject matter embraced in this writ:

That Charles H. T. Collis is the Commissioner of Public Works, and head of one of the Departments of The Mayor, Aldermen and Commonalty of the City of New York, as defined by Section 34 and 38 of the New York City Consolidated Act.

That in the said Department of Public Works are at least eight bureaus, one of which latter, by Section 317 of the said New York City Consolidated Act, is described as and known to be "a bureau for the removal of incumbrances on the streets and sidewalks or public grounds not included in any Park, the chief officer of which shall be called the Superintendent of Incumbrances, to whom all complaints shall be made, and by whom such incumbrances shall be removed."



That the present Superintendent of Incumbrances in the Respondent, William Henkel, who is a subordinate officer under said Collis.

That the said Collis as Commissioner of Public Works is, by Section 324 of said Consolidated Act, charged with the duty of removing all obstructions from the Streets and sidewalks or public ground not included in any public park in the City of New York.

That Broadway between Vesey and Barclay Streets, and Vesey and Barclay Streets between Broadway and Church Streets (all inclusive) are three of the public streets of the City of New York, and between said Vesey and Barclay Streets, on the West side of Broadway, the Astor House occupies the entire block, and on the north side of Vesey Street, and the South side of Barclay Street, westerly from Broadway, said Astor House occupies 201-2/8 feet, and in front of said Astor House, on Broadway and said side Streets, is the usual sidewalk, extending from the houseline to the curbline of Broadway and Vesey and Barclay Streets.

That on all of said blocks, Broadway, Barclay and Vesey Streets, the ground or store floor of said Astor House is used and occupied by stores, said stores, on Broadway being occupied as follows:

There are ten stores in front of said Astor House on Broadway, the Southerly one being occupied by the Pennsylvania Railroad Company Office; next to that is the store occupied by Ellwell & Co, shoes; next to that is the store occupied by one Erlich, an optitian; next to that is the store occupied by the Traveller's Supply Manufacturing Company; next to that the store occupied by M.H.Stearns &



Company, shoes; then comes the Hotel Entrance; next on the North is the store occupied by E. Forster, Cigars, and one Burroughs, Ticket Agent; next to that is the store occupied by Henry D. Levy, fountain pens, jewelry, &c.; next to that are two stores occupied by Charles F. Zoncada, mens furnishings; and the Northerly side is occupied by the Astor House Pharmacy.

The several stores are known respectively as Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10 Astor House.

On Vesey Street, around the corner from Broadway, (said Vesey Street also being a public street) in said Astor House building, the first store round the corner in the basement is occupied by D.A. Doyle, a dealer in trunks, and also the first store on the Vesey Street level, No. 1 Vesey Street, is also occupied by the said Doyle. Around the corner on Barclay Street (which Barclay Street is also a public Street) in the said Astor House building, are likewise stores, and among the occupants is one Shinzel, a dealer in boots.

In front of all the stores above enumerated, those on Broadway, those on Vesey Street, and one on Barclay Street, are daily (except Sundays and holidays when observed by the storekeepers) placed, and continued throughout the business hours of the day, showcases, placed there by the tenants, resting upon the sidewalk in front of said stores, exposing merchandise for view, which extend out from the house or building line, as the same is recognized by custom and the City ordinances, in each instance, and upon that portion of the sidewalk appropriated exclusively to the use of the general public for the use of pedestrians and in front of other stores are placed and maintained trunks,



bags, umbrellas, portmanteaux and other leather goods of the tenants Doyle and of the Travellers Supply Manufacturing Company; also hanging signs, also resting upon the sidewalk and extending out from said house line from five to six feet; also show-cases and show-windows not resting upon the sidewalk, but fastened on to the building front and extending out beyond the said house-line from two to four feet; also hanging signs maintained continuously, not resting upon the sidewalk, but suspended from the stores and projecting beyond said house-line from two to six feet or thereabouts, all of which are more specifically described below, to wit:

In front of the store and basement of said Doyle, on Vesey Street and also extending around the corner on to Broadway, are piled large quantities of trunks, bags and other leather wares extending out from the houseline into and upon the sidewalk of Vesey Street and on Broadway; in front of the corner store on Broadway occupied by the Pennsylvania Railroad Company, not less than three feet; in front of No. 1 Astor House, on Broadway, the store occupied by Ellwell & Company (shoes) is a show-case, extending three feet into the sidewalk from the house line. In front of No. 3 Astor House, the store occupied by Erlich (optician) is a show case, resting upon the sidewalk and extending out three feet at least from the house line. In front of No. 4 Astor House, the store occupied by the Travellers Supply Manufacturing Company, resting on the sidewalk, are three showcases, extending about three feet out from the house line; in front of No. 5 Astor House, the store occupied by Stearns & Company (shoes), are three showcases resting on the sidewalk, extending not less than three feet from the house line, and under the windows affixed to the



building, extending out from the house line some eight to ten inches; in front of No. 6 Astor House, the store occupied by E. Forster and one Burroughs, is a hanging sign affixed to the building, which extends out from the house line, over the sidewalk (but does not rest on the sidewalk) at least three feet; in front of No. 7 Astor House, the store occupied by one Levy, are showcases under the windows, affixed to the building, extending out from the house line some eight to ten inches, and also hanging cases suspended from brackets, not resting on the sidewalk, but coming close down to and within a few inches of the sidewalk, extending out from the house line about one foot. In front of Nos. 8 and 9 Astor House, the stores occupied by Zoncada, are three showcases resting on the sidewalk, extending out from the house line some three feet, as well as glass showcases under the windows, affixed to the building, and extending out from the house line some twelve to eighteen inches. Around the corner, on Barclay Street, and in front of the store occupied by one Shinzel (a dealer in boots) is a show case, resting on the sidewalk, and standing out from the line from two to three feet.

The sidewalk of the block in front of the Astor House, as well as the sidewalk on Barclay Street and Vesey Street aforesaid, are public sidewalks, appropriated by law for the exclusive use of the general public, and are very much crowded and travelled throughout each business day. The maintenance of those show cases, signs and merchandise, as above described, is a menace to the public good and convenience; it seriously interferes with public travel; it greatly discommodates the people having occasion to travel over the sidewalk; it obstructs the view of the stores to passers-by; and it interferes with the general comfort and



rights of your relator as one of the general public. All such articles and displays are unlawful encroachments upon the public highway, and are illegally placed there, in fact no licence or permit has ever been procured to place and maintain them, if such could be granted, and they are maintained constantly in utter defiance to the rights of the general public to the exclusive use of the sidewalks free from such encroachments; and they interfere with the ordinary use of the sidewalk by pedestrians for which the same are constructed and maintained.

That by the Charter of the Mayor, Aldermen and Commonalty of the City of New York, it is expressly provided that it shall not be lawful to authorize or permit the erection or continuance upon the sidewalk of any public street, any encumbrance or encroachment of the character heretofore described, and the Commissioner of Public Works is charged with the duty of preventing such encroachments and obstructions; and by the like Charter a bureau for the removal of encumbrances is provided by Section 317 of the New York City Consolidated Act, the chief officer of which is the Superintendent of Incumbrances, by whom all such encroachments should be removed.

That heretofore, to wit, on or about the 20th day of May, 1896, and again on the 2nd day of June, 1896, your petitioner made complaint in writing to the said Superintendent of Incumbrances, through his Attorneys, Blandy, Mooney & Shipman, and to said Commissioner of Public Works, of the encroachments heretofore referred to, and requested that such incumbrances be removed; but that the said Commissioner of Public Works and the said Superintendent of Incumbrances have, and each has, neglected to remove or cause the same to



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be removed, after full opportunity to do so.

And which complaint we have adjudged to be true, as appears to us of record by an order of the Hon. Leslie W. Russell, A Justice of our Court, made and entered in the office of the Clerk of the City and County of New York on the 26th day of June 1896:

NOW THEREFORE, we being willing that speedy justice should be done in this behalf to him, the said Philip Bohnet,

DO COMMAND AND ENJOIN YOU, that immediately after the receipt of this Writ, you forthwith remove from in front of the premises hereinafter more particularly enumerated, all and every show case, hanging signs, trunks, valises, bags, and other articles of merchandisem either resting upon the sidewalk or suspended from the building and not resting on the sidewalk, as the said sidewalk fronts the Astor House on Broadway, between Vesey and Barclay Streets, and from in front of the Astor House as the same fronts on Vesey Street, and also from in front of the said Astor House as the same fronts on Barclay Street, all in the City of New York, to wit:

(1) From in front of No. 1 Astor House on Broadway, being the Northwest corner of Broadway and Vesey Street, being the premises occupied by the Pennsylvania Railroad Company, all trunks, bags, satchels and other leather ware and merchandise piled up on the sidewalk, extending outwardly from the house line into and upon the sidewalk of said Broadway, supposed to be the property of one Doyle.

(2) From in front of No. 2 Astor House on said Broadway, the store occupied by Ellwell & Company (shoes), a showcase resting upon the sidewalk standing out from the house line.



(3) From in front of 3 Astor House the store occupied by Erlich (optician) the showcase resting on the sidewalk and extending out from the houseline.

(4) From in front of No. 4 Astor House, the store occupied by the Travellers Supply Manufacturing Company, three showcases resting on the sidewalk, and extending out from the house line.

(5) From in front of No. 5 Astor House, occupied by Stern & Company (shoes) three showcases resting on the sidewalk and extending from the house line and under the windows of said last named store, the showcases extending out from the house line.

(6) From in front of No. 6 Astor House occupied by E. Foster and one Burroughs, a hanging sign, and all hanging signs affixed to the building which extend out from the house line over the sidewalk.

(7) From in front of No. 7 Astor House, occupied by one Levy, showcases under the windows, affixed to the building, and extending out from the house line, and also hanging cases suspended from brackets overhanging the sidewalk out from the house line.

(8) From in front of Nos. 8 and 9 Astor House, both occupied by one Zoncada, three showcases resting on the sidewalk, extending out from the house line, as well as glass showcases under the windows, affixed to the building and extending out from the house line. Together with any other showcases, hanging signs, or other projections exhibiting wares or advertising the business of any of the occupants of any of the stores on Broadway under the Astor House from Vesey Street to Barclay Street, which extend out, upon or over the sidewalk, from the house line.



(9) On Vesey Street, from in front of No.1 Vesey Street occupied by one Doyle, leather goods, consisting of trunks, satchels and other merchandise, supposed to belong to said Doyle, resting on the sidewalk in front of the said No. 1 Vesey Street, and the like character of goods on said Vesey Street sidewalk in front of a basement occupied by said Doyle. Also in front of either of said premises on Vesey Street, a showcase extending out from the house line upon or over the sidewalk of Vesey Street aforesaid.

(10) From in front of No.2 Vesey Street, occupied by Dr. Marsh, two showcases, standing out from the house line.

(11) From in front of No.3 Vesey Street, occupied by Craft & Company, booksellers, all goods, consisting of books and periodicals, exposed to view for sale, resting on the steps extending from the house line, and also a showcase extending out from said house line.

(12) On Barclay Street. The South side thereof, being the North side of said Astor House from in front of the store occupied by one Shinzel, a showcase resting on the sidewalk and standing out from the house line.

Together with any other like incumbrances resting on the sidewalk or overhanging the same, either on Broadway, Vesey Street or Barclay Street, as those surround the Astor House in the front, and on the two sides thereof, such as showcases, overhanging signs, or other display of goods resting on the sidewalk or overhanging the sidewalk of the store floor of said Astor House, whether the same are heretofore enumerated or otherwise, and extending out beyond the house line; and that the said goods, wares and merchandise, showcases and overhanging signs, be kept by you continuously removed from the said sidewalks and from overhanging the



said sidewalks beyond the house line of said streets and  
said Broadway, until the further order of this Court.

All of which we have adjudged to be incumbrances  
upon the public highway, and to be a public nuisance, and  
contrary to the Statute in that behalf made and provided.

And how you shall have executed this our Writ,  
make known to our said Supreme Court, at a Special Term for  
litigated Motions held in part I thereof in the County Court  
House in the City of New York on the 8th day of July 1896.

And have you then and there this Writ.

WITNESS, Hon. Leslie W. Russell, one of the Jus-  
tices of our Supreme Court this 26th day of June One thousand  
eight hundred and ninety-six.

By order of the Court,

(signed) HENRY D. PUUROY

Clerk.





New York Supreme Court

The People ex rel Philip Bohnet

against

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The Mayor, Aldermen & Commonalty  
of the City of New York, Collis  
as Commissioner, and Henkel as  
Superintendent of Incumbrances.

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Writ of Peremptory Mandamus.

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Let this Writ issue,

June 26, 1896

Leslie W. Russell,

J.S.C.

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Blandy, Mooney & Shipman,

Attorneys for

Wilks Building, 15 Wall

St.,

New York City.

In the Supreme Court,  
City and County of New York.

\*\*\*\*\*  
Mary Higgins :  
                  :   
          against :  
                  :   
The Manhattan Electric Light :  
                                  :   
Company, limited. :  
                                  :   
\*\*\*\*\*:

POINTS IN FAVOR OF INJUNCTION.  
  
By L. E. Chittenden.

Aside from technical questions this application presents the question whether,

In the face of a statute which prohibits the nuisance of new poles and wires above the surface of the streets a new corporation can construct and operate a trunk line of poles and wires, the largest, most capacious and permanent hitherto erected and so create, increase and perpetuate the nuisance?

THE PROPOSED STRUCTURE IS A NUISANCE,  
BOTH PUBLIC AND PRIVATE.

This proposition no longer requires discussion. It is an obvious fact. It is treated as a nuisance in the statutes. And the magnitude of the evil is well described



by Chief Justice Ruger in the People vs. Squires, ~~100~~ 107th. New York, in which at page 603, ~~where~~ <sup>he</sup> says: "The necessity of these Acts sprung out of a great evil ~~in~~ which in recent times has grown up and afflicted large cities by the multiplication of rival and competing companies. x x x x x This evil had become so great that every large city was covered with a network of cables and wires attached to poles, houses, buildings and elevated structures, bringing danger, inconvenience and annoyance to the public."

The right of a property owner to maintain an action for the removal of such a nuisance from the street in front of his property has been so often upheld that it is no longer open to discussion. It is even held that he may maintain the action without proving any special damage if the alleged construction is unauthorized by law.

#### FACTS.

There can be no question about the facts in this case. The defendant was organized in October, 1888; and since <sup>/</sup> all the legislation upon the subject has taken place. It is a private corporation having no public functions whatever, created solely for purposes of private profit. It owns no subways. The essential purpose of its creation was to create a new business of electric lighting in this city by means of overhead conductors placed in the streets in violation of law. It constructed its plant,



Street  
new, on an extensive scale at 80th. and Avenue B, miles distant from any subway, and it intended and still intends to carry on the business of electric lighting all over the city by means of a trunk line of the largest and most objectionable character running the entire length of First Avenue and connecting with its plant where the electricity is generated. In other words it was created for the purpose of making money by the use of the public streets of this city and, as we claim, without authority of law.

#### FIRST.

#### THE STATUTES.

There is an interesting history to the legislation upon this subject. In the year 1833 in an action in favor of The people vs. The Metropolitan Telephone and Telegraph Company there was a thorough trial of the question of fact whether underground conductors of electricity were practicable. After hearing a large amount of expert evidence the jury found that such conductors were practicable, and there was a verdict for the people. Following this, at the session of the legislature of 1884, a special committee of the Senate undertook the investigation of this subject, heard a large amount of expert testimony upon it and, finally, reported that the time had arrived when these electrical conductors ought to be put under ground and the streets relieved of their nuisance. That committee recommended and the legislature passed what is now known as chapter 534 of the laws of 1884. This was a carefully considered statute.



it undertook to do nothing more than to regulate and control the uses of the streets in large cities. It provided by section First that after that date (June 14, 1884,) all Telegraph, Telephonic and Electric Light Wires and cables in cities of a certain class "shall hereafter be placed under the surface of the streets, lanes and avenues of said City." By the second section it required the corporation owning such wires in any street to remove them before the 1st. of November, 1885. And by the third section it was provided that if they did not so remove them "The local governments of the said cities shall then and they are hereby directed to remove without delay all telegraph, electric light and such other wires, cables and poles wherever found above ground within the corporate limits of their respective cities."

It will be noticed that this act did not attempt to interfere with the construction of underground lines. It left the construction of such lines where it always should have been left, with the persons or corporations who desired to construct and use them. They were the persons best acquainted with the subject, most capable of making such lines efficient, and it was their duty if they wished to use the streets for that purpose to arrange between themselves for the construction of subways which might be used by all of them and at their own expense. It will be hereafter seen that the whole difficulty has since



arisen from the interfering by indiscreet and thoughtless persons with the operation of this law and by exceedingly careless and artificial legislation. The Act of 1884 is, however, still in full force and vigor. This will be demonstrated after its amendments are considered. The first amendment was by chapter 499 of 1885, which created a Board of Electrical Subways and charged that Board with the primary duty of enforcing the provisions of the Act of 1884. "It is hereby made the duty of said Board of Commissioners to cause to be removed from the surface and put, maintained and operated under ground wherever practicable all electrical wires or cables used or to be used in any street, avenue or other highway in any such city, so as to enable and require all duly authorized companies operating or intending to operate electrical conductors in any street, avenue or highway of any such city as is or shall be affected by the provisions of said Act to transact their business with underground conductors wherever practicable." This quotation embraces the whole mission, duty and responsibility of the Board. The remaining provisions of the Act are all incidental and concern only the manner in which the primary duty of removal shall be executed.

If the companies did not themselves place ~~their~~ their wires under ground, the fourth section of the Act of 1885 pointed out the first duty of the Board. It was the duty intended to constitute the basis of all their future



operations. I shall discuss it only as it concerns overhead wires. The fourth section provided that if no "suitable plan is proposed or in use within sixty days after the passage of this Act it shall be the duty of such Board to cause ~~it~~ to be devised and made ready for use such a general plan as will meet the requirements of said Act and of this Act; and the Board shall have full authority to compel all companies operating electric wires to use such subways ~~and~~ so prepared in accordance with the provisions of this Act."

The section then points out the only provision for any departure from underground conductors. "Wherever in the suburbs or along the streets, avenues or other highways in sparsely inhabited or unoccupied portions of any such city the public interests do not require the electrical conductors to be placed under ground and wherever in any other locality of any such city it is deemed by said Board to be, for any cause, impracticable to construct and successfully operate

underground the electrical conductors required by any

such company, then and in either of those cases, it shall be

the duty of said Board of Commissioners to examine ~~the~~ <sup>and</sup>

*grant the application*

~~ground~~ of any such company for permission to deviate from an underground system."

What is the meaning of ~~a~~ "a general plan as will meet the requirements of said Act <sup>and</sup> of this Act?" Obviously it is a plan for a system of subways throughout the city which shall also show where, under this provision of the



Act, any deviation from an underground system is admissible. It is a deviation only which is authorized. Any general line, anywhere, must be an underground line. It can only deviate from an underground line in three places: In sparsely inhabited portions, in unoccupied portions of the city or where it is decided by the Board impracticable to construct and operate underground conductors. These are the outside limits of permissible deviation. And it was the duty of the Board to prepare such a general plan as would show the particular places in a street which were either unoccupied, sparsely inhabited or impracticable for underground conductors.

SECOND.

No such plan has ever been made or adopted by the Board; and therefore, for this reason, the Board has no jurisdiction to grant permits for overhead conductors.

We have the advantage of a construction of these Acts by the Court of Appeals in *The People vs. Squires*. After citing the Act of 1884, at page 599, the Chief Justice says: "These provisions do not seem to have been impaired in any material respect by the subsequent legislation of 1885 and 1886; and by express terms the Act applies as well to existing companies as to those hereafter formed." The Chief Justice then goes on to point out, at <sup>page</sup> 601, that the Act of 1884 was a law by the force of its own enactment and so continued. It has never been



repealed or re-enacted. The Act of 1885 treats that of 1884 as a valid and existing law and purports simply to provide methods by which it may be more conveniently carried out and enforced."

It is upon this construction of the Act of 1884 that we deny the power and authority of the Board created under the Act of 1885, or its successor the Board of Control, to nullify the Act of 1884, to create new trunk lines of overhead conductors and to increase instead of diminishing the nuisance which has too long obstructed the streets of this city.

### THIRD.

We have then a law passed in June, 1884 absolutely prohibiting new overhead pole lines. We have a Board created in 1885 for the single purpose of removing the pole lines; and that Board has been at work nearly four years. It has never had the slightest color of authority to grant franchises or to authorize new pole lines. And yet it is shown by affidavits in this case that there are more than twice as many pole line obstructions in the streets as there were in 1884 and that these nuisances were never increased with such rapidity as at the present time. To complete the climax of absurdity, we have a new electric light company created for no public purpose but as a private speculation, locating its plant at 80th. Street and Avenue B, and engaged in the construction, from end to end of



First Avenue and across the city, of the largest, the most capacious, permanent and objectional pole line hitherto projected. To say that this is in flagrant violation of the spirit and letter of all the statutes is to apply a very moderate term to its description.

But it is said that this company wishes to connect its plant with the subway on Sixth Avenue. Then let it build its own subway from its plant to Sixth Avenue as it is required to do by law. The Manhattan Company can build a subway for its own conductors if it chooses. The Act of 1885 not only makes it the duty of the Board to deal with existing pole lines in the streets but its second section makes it the duty of the Board to "Require all duly authorised persons operating or intending to operate electrical conductors in any street, avenue or highway of any such city as is or shall be affected by the provisions of said Act to transact their business with underground conductors wherever practicable."

This pretence that the Manhattan Company wishes to connect 80th. Street with the Sixth Avenue subway is too absurd for serious argument. Why did it not build its plant on a subway? It built at 80th. Street by its own choice and knowing all the facts. It would be no more absurd to say that a gas company should place its works in the suburbs of the city and then connect them with



its mains under ground by pipes laid along the sidewalk because there were no underground mains than it is for this company to assert a similar claim.

It is not pretended that First Avenue is either in the suburbs or the sparsely inhabited portions of the city. I have heard it suggested that underground conductors were impracticable because the Commissioner of Public Works would not allow the street to be opened for the construction of subways. This is no answer to our position. The impracticability does not exist unless the difficulty is one which cannot be obviated. If the Commissioner will not permit the avenue to be opened in the Winter then let these parties wait until Spring. But I do not believe that any intelligent city officer would refuse any permission which was necessary to the intelligent application of the statutes in question and the abatement of the nuisances to which they are directed.

It is true that the statutes of 1885 and 1887 are very crude and were evidently drawn by someone without experience or acquaintance with the rules of law. Probably most of the difficulties and the want of success that have attended the execution of these statutes arise from the fact that they have not been attempted to be enforced under cautious, conservative and impartial counsel. It is not even now too late to correct the errors of the past; and



the first step to be taken is to restrict the operations of the Board to the removal of the nuisance and not to its increase by new pole lines.

#### F I N A L L Y.

The so-called permits to the Manhattan Company of the 4th. of December are not only wholly unauthorized by law but they afford an instance of the careless administration to which I have adverted. In order to authorize the erection of a single pole the statute requires, First: That it shall be applied for as a part of an underground line by a company conducting its general business by means of an underground line, for a deviation from its underground system. Second: The application should be based upon one of the three conditions named. Either because the locality was in the suburbs or sparsely populated parts of the city or where, for local, natural causes, underground conductors were impracticable. Third: The permit should show that the Board decided that one of the alleged causes for the grant existed.. Fourth: The permit should prescribe the precise place where the pole is to be planted, and its dimensions. Fifth: The permit should be signed by the authorities of the Board and be recorded in the office of the Mayor. All these conditions are necessary requisites to a legal permit.

The Board has no more right to delegate its authority over locations and dimensions to an expert than a Judge has to delegate his judicial authority to a private person. The grant, therefore, is wholly void.



But I do not care much to press the objections to this line except upon one substantial and unanswerable ground in which the entire city is interested. That ground is that such a pole line as the defendant is constructing is in violation of law, is prohibited by law, and except in the legislature of the state there is no officer, Board or body of men with any authority to permit its erection.

Respectfully submitted by

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N. Y. Supreme Court.

Mary Higgins

vs.

The Manhattan Electric  
Light Company, limited.

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Brief on Motion to Con-  
tinue Injunction.

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