

WHITMAN V. HUBBELL.

*Circuit Court, S. D. New York.*

March, 1887.

MUNICIPAL CORPORATIONS—AWNINGS—INJUNCTION.

The city council of New York being authorized by Laws N. Y. 1882, c. 410, (Consolidation Act,) § 86, subd. 8, “to regulate the use of the streets for” awnings, a motion to restrain the maintenance of an awning *pendente lite* will not be granted in an action to compel the removal of the awning.

In Equity. Motion for injunction *pendente lite*.

Action by Nathaniel Whitman against W. L. Hubbell, as treasurer of the Adams Express Company, to compel the removal of an awning, on the ground that it interfered with the view of plaintiff’s signs. Laws N. Y. 1882, c. 410, (Consolidation Act,) § 86, subd. 8, provides that the city council of New York shall have power “to regulate the use of the streets for signs, sign-posts, awnings,” etc.

*Ira W. Warren*, for plaintiff.

*Seward, Da Costa & Guthrie*, for defendant.

BROWN, J. Under the Consolidation Act, § 86, subd. 8, the common council have apparently authority from the legislature to authorize awnings. The alleged want of constitutional power of the legislature to confer this authority is too doubtful a question to be determined upon a preliminary motion of this kind. If within 10 days the awning in question is made to conform strictly to the municipal regulations, the motion should, on the above grounds, be denied, without prejudice, however, to the consideration of the whole subject upon the trial of the cause. Ordered accordingly.