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Opinion of the Court.

mission, their action could not be regarded as unauthorized, even though they may have exercised the discretion unfairly.

Similarly in *Pacific Gas Imp. Company v. Ellert*, 64 Fed. Rep. 421, where a public board was given power to improve streets, and proceeded in excess of its powers but not in violation of them, its action was regarded by Mr. Justice McKenna, then Circuit Judge, as state action.

In the present case defendants were proceeding, not only in violation of provisions of the state law, but in opposition to plain prohibitions.

Section 5 of the act of March 3, 1875, 18 Stat. 470, c. 137, provided that if in any suit in the Circuit Court it should appear, to the satisfaction of the court, at any time, that the suit did not really and substantially involve a dispute or controversy properly within its jurisdiction, the court should proceed no further, but dismiss the suit. The last paragraph of this section was in terms repealed by the act of March 3, 1887, 24 Stat. 552, c. 373, reënacted August 13, 1888, 25 Stat. 433, c. 866, (the part repealed not being material here,) but otherwise the section remained and remains in full force. This case went off on the motion for preliminary injunction, and the bill was properly dismissed, whether treated as if heard on demurrer, or on the proofs by affidavit.

Decree affirmed.

HUNTINGTON *v.* THE CITY OF NEW YORK ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF NEW YORK.

No. 172. Argued March 3, 4, 1904.—Decided March 21, 1904.

Decided on authority of *Barney v. City of New York*, *ante*, p. 430.

Same counsel as in No. 159.

THE CHIEF JUSTICE. This case is governed by the decision just announced, and the decree is accordingly

Affirmed.