second appropriation is inconsistent with the first, and tends to deprive the corporation first acquiring such public use from the full and free enjoyment thereof. Conceding that legislative power has conferred upon municipal corporations the right to extend streets across a railroad's right of way, conceding that it has extended to county commissioners the right to extend highway crossings over a railroad's right of way, conceding that it has conferred the same authority upon township trustees, it must nevertheless also be conceded that in neither of these cases can the power conferred be exercised so as to deprive the railroad company of the full and free use of the property first condemned by it for railroad purposes.

Under the facts in this case it is very clear that the ditch which it is now proposed to construct upon the right of way for 1,150 feet near the city of Fostoria cannot be placed there without a substantial impairment of the complainant's roadbed. A ditch so constructed would deprive the complainant company of the power to build a side track over the same ground, would prevent it from constructing a double track along the same ground, would prevent it from using said ground for other purposes essential to the full enjoyment of its corporate powers. I do not think it is necessary at this stage of the case for me to determine whether or not the construction of said ditch would increase the hazard of operating the complainant's road. There is strong testimony tending to support such a claim. It is sufficient, however, for me for the present to find that the construction of said ditch would deprive the complainant of the full enjoyment of the lands which it has appropriated under the laws of the state for public purposes, not only for present use, but for future probable use, and that, therefore, it ought not to be permitted.

The motion to dissolve the temporary injunction will be denied.

INTERSTATE COMMERCE COMMISSION v. TEXAS & PAC. RY. CO.

(Circuit Court of Appeals, Second Circuit. October 17, 1893.)

1. CARRIERS—INTERSTATE COMMERCE LAW—DISCRIMINATION—OCEAN COMPETITION.
   Under sections 2 and 3 of the interstate commerce law (24 Stat. 379, 380,) the mere fact of the existence of ocean competition (assuming that such competition may in some cases and in some degree warrant a difference in rates) will not justify a railroad company's rates for carrying merchandise from New Orleans to San Francisco which comes to New Orleans from domestic points, which rates are treble, and in some cases four times, the rates charged for carriage of like kinds of merchandise from New Orleans to San Francisco which reach New Orleans from foreign ports, although such lower rates constitute the only condition on which the carrier can obtain any part in such foreign traffic. 52 Fed. Rep. 187, affirmed.

2. SAME—CIRCUIT COURTS—ENFORCING INTERSTATE COMMERCE COMMISSIONERS' ORDER.
   The circuit court should enforce an order of the interstate commerce commission forbidding any discrimination in rates, even though some

discrimination might be justifiable, when it appears that the rates actually charged are unlawful, and the carrier makes no showing as to what would be a lawful discrimination in view of the circumstances.

3. SAME—PARTIES—JOINT RATES.
An order of the interstate commerce commission, made against two railroad companies in respect to a joint rate, in a proceeding to which both were parties, may be enforced by a circuit court against one of the companies which is within its jurisdiction, although the other is without its jurisdiction, and cannot be made a party. 52 Fed. Rep. 187, affirmed.

4. FEDERAL COURTS—JURISDICTION—DOMICILE OF RAILROAD COMPANY.
In the absence of any charter provision on the subject, the principal office and domicile of a railroad corporation, for the purposes of suit in a federal court, is in the district where its stockholders' and directors' meetings are held, where the records thereof are kept, together with the stock certificate book, and where the principal officers have their offices, rather than in a different district, where the general administrative offices of the heads of departments are located.

Appeal from the Circuit Court of the United States for the Southern District of New York.

In Equity. Application by the interstate commerce commission to enforce an order made by it against the Texas & Pacific Railway Company forbidding discrimination in freight rates. The petition was granted by the circuit court, (52 Fed. Rep. 187,) and the respondent appeals. Affirmed.

Winslow S. Pierce and David D. Duncan, for appellant.

John D. Kernan and Edward Mitchell, U. S. Dist. Atty., for appellee.

Before LACOMBE and SHIPMAN, Circuit Judges.

SHIPMAN, Circuit Judge. On March 23, 1889, the interstate commerce commission made, not upon contention of parties, a general order, which, among other things, provided as follows:

"Imported traffic transported to any place in the United States from a port of entry, or place of reception, whether in this country or in an adjacent foreign country, is required to be taken on the inland tariff governing other freights."

This order was quite generally obeyed by those railroad companies and their connecting lines which carried imported goods westward from the northern Atlantic seaboard. At least six railroad companies ceased, after said order, their previous practice of discrimination in favor of imported traffic. On June 19, 1889, the commission filed its decision in regard to export rates in the case of New York Produce Exchange v. New York Cent. & H. R. R. Co., 3 Inter St. Commerce Com. R. 137. The opinion shows that the "trunk lines," so called, had, "under resolutions of their association, made through export rates, of which the inland proportion accepted by them was, at the port of New York, often ten cents or more per hundred pounds less on like traffic than the published tariff rates charged at the same time to the same port." It was held "that the discrepancy between the proportion of the through rate accepted and the established tariffs for seaboard consignments for

the same inland carriage is not shown to have been justified by any circumstances tending to show that it was just or proper, and that it must therefore be deemed an unjust and unlawful discrimination as against the transportation terminating at that port," and that "the only practicable mode yet devised for making through export rates, as appears by past experience, is to add to these established inland rates from the interior to the seaboard the current ocean rates." This decision was confined to export rates at the port of New York, but, as thus made, was of almost national importance. It is believed that the railroad companies which were parties to the litigation complied with the order of the commission.

In this state of the general railroad policy which had been established by the commission in regard to rates which discriminated in favor of either import or export traffic against inland traffic, the New York Board of Trade and Transportation filed before the interstate commerce commission, on November 29, 1889, a complaint against the Pennsylvania Railroad Company and its connecting western railroad companies, charging, in substance, that these corporations were, in violation of the act to regulate commerce, guilty of unjust discrimination, in that, for the transportation of property to Chicago and other western points, which was delivered to them at New York or Philadelphia by vessels or steamship lines from foreign ports, under through bills of lading, they were charging rates 50 per cent. lower than for the like and contemporaneous service rendered to property delivered at New York or Philadelphia which did not arrive from foreign ports. Subsequently, the San Francisco Chamber of Commerce became a party complainant, and divers other railroad companies, among them the Texas & Pacific and the Southern Pacific Railroad Companies, were made parties defendant, until 28 companies were defendants. This complaint was apparently brought to compel universal obedience to the order of March, 1889. The commission dismissed the complaint as to 18 defendants and found that its averments were true as to 10 defendants, among which were the Texas & Pacific and the Southern Pacific Companies, and as to said defendants ordered, on January 29, 1891, that each of them, on and after May 5, 1891, cease from carrying any article of import traffic shipped from any foreign port through any port of entry of the United States, or any port of entry in a foreign country adjacent to the United States, upon through bills of lading, and destined to any place within the United States, upon any other than the published inland tariff covering the transportation of other freight of like kind over their respective lines from such port of entry to such place of destination, which order was duly served upon the Texas & Pacific Railroad Company.

On or about January 18, 1892, the commission brought its petition against said company before the circuit court for the southern district of New York, alleging that it had willfully violated said order by charging, collecting, and receiving freight rates which had been declared to be illegal, and by way of specification the petition alleged that the offending and also the regular inland rates were shown in a table annexed to the petition, marked "Exhibit 36."