where carriers seek advantage of each other by discriminating rates, or where they use the competition to compel the public to make up the losses to themselves by increased rates elsewhere, and outside of its influence, but becomes, in combination with the physical imperfection, a totally destructive agency. In such a case, however,—it may be in others,—the fact of competition is a dissimilar condition or circumstance, whether within control of the commission or not. The case of Ilwaco Ry. & Nav. Co. v. Oregon S. L. & U. N. Ry. Co., 6 C. C. A. 495, 57 Fed. 673, where the defendant company was allowed the exclusive use of its wharf, somewhat illustrates the distinction we enforce. It was said by the court that "for a carrier to prefer itself in its own proper business is not the discrimination which is condemned." See, also, on this point of self-preference legitimately exercised, Little Rock & M. R. Co. v. East Tennessee, V. & G. R. Co., 47 Fed. 771, 776. So we say that, for a carrier to protect itself against the physical disadvantage it is under in relation to its rivals, is not an unlawful discrimination, if it be not used as a colorable device to evade the act. And we find in the case of Cowan v. Bond, 39 Fed. 54, an illustration that an expense of accessorial service paid by the carrier for its own advantage does not necessarily amount to a discrimination, when, by deducting it from the rate, a difference in rate mathematically appears. There a carrier compressed the cotton bales of a certain shipper at its own expense, and another shipper complained that the expense should be deducted from the usual rate he paid for cotton not compressed; and it was held that, as he could have had his cotton bales compressed on the same terms, there was no discrimination. Plainly, it was no concern of the plaintiff in that case whether the carrier compressed his cotton or not, so it was carried according to the contract, as it is, on the particular facts of this case, no concern of Ionia whether Grand Rapids has cartage or not, so long as it only pays an equal rate for a shorter haul, which is not of itself forbidden.

From what has been already ruled, it is apparent that even if the commission had established, by its inquiry, an abuse to be remedied, the order it gave was not a proper one, and should not be enforced. Large as its powers may be, and plenary as may be the authority of the court to enforce, by mandatory injunctions or otherwise, obedience to its orders, its powers are those of regulation, and not construction or reconstruction. Interstate Commerce Commission v. Baltimore & O. R. Co., 43 Fed. 37, 50, and 145 U. S. 263, 12 Sup. Ct. 844. And now see Cincinnati, N. O. & T. P. Ry. Co. v. Interstate Commerce Commission (Oct., 1895) 16 Sup. Ct. 700. This is, as the commission has made it, a dispute about discriminating rates, and the easy remedy, on such a complaint, is a readjustment of the rates to cover the discrepancy. As was said in one of the cases we have cited, the method of redress by readjusting the rates must always be left to the choice of the company, at least in the first instance; and in the subsequent St. Louis case, supra, the commission adopted that course, and made the proper order. Here was an arbitrary and peremptory order to abandon the accessorial cartage at Grand Rapids, without regard to any rates, or without option as to

readjustment of them, the defendant company not even being allowed the alternative of establishing a like service at Ionia. It is, in its nature, not a regulation of commerce, so much as an interference with the rights of property and its use, which possibly even congress could not, in this way, prohibit. At all events, it is an attempted exercise of a legislative power which congress has not, we think, conferred upon the commission. Northern Pac. R. Co. v. Washington Territory, supra.

Nor was there any power in the circuit court to modify or change the order of the commission. Whatever may be the plenary power of a court of equity to command, at the suit of those who are injured, the performance of any duty arising out of a contract or statutory obligation, the jurisdiction it was exercising here is strictly special and statutory, and is limited, as all special jurisdiction is, to the precise power conferred by the interstate commerce act, which is only to compel obedience to the "lawful order" of the commission. It has not been granted any broader power to exercise the authority of the commission itself by substituting a new regulation or order of its own, or modifying that which the commission has given. It is purely an auxiliary jurisdiction. Interstate Commerce Commission v. Delaware, L. & W. R. Co., 64 Fed. 723. The ordinary jurisdiction of the courts is open to any one injured to invoke their more plenary powers, except so far as that of an action at law for damages has been made optional with the cumulative statutory remedy by section 9 of the act. The remedy by bill in equity has not been so restricted, and is yet available; but here, the powers of the commission being administrative, and not judicial, the ancillary and supplemental judicial jurisdiction is necessarily limited to the purpose of its creation, and can go no further than to grant or refuse compulsory obedience to the lawful orders of the commission, and as it makes them. Interstate Commerce Commission v. Delaware, L. & W. R. Co., supra; Kentucky & I. Bridge Co. v. Louisville & N. R. Co., 37 Fed. 567; Interstate Commerce Commission v. Lehigh Val. R. Co., 49 Fed. 177; Shinkle, Wilson & Kreis Co. v. Louisville & N. R. Co., 62 Fed. 690; Little Rock & M. R. Co. v. East Tennessee, V. & G. R. Co., 47 Fed. 772. It confirms our confidence in the rulings we have made that since this opinion was prepared the supreme court has announced its decision in one of the cases herein cited, appealed to that court, in an opinion by Mr. Justice Shiras, which, although presenting differing facts, is in entire harmony with the views we have here expressed. Texas & P. R. Co. v. Interstate Commerce Commission, 16 Sup. Ct. 666. In any view, therefore, either because this order was not according to the right of the case, as we understand it, or because it directed an improper mode of redressing the abuse, if any existed, the decree must be reversed, and the cause remanded to the circuit court, with directions to dismiss the petition, with costs.

THE ST. JOHN.

CONERY et al. v. DELAHOUSSAYE et al.[1]

(Circuit Court of Appeals, Fifth Circuit. February 17, 1896.)

No. 423.

MARITIME LIENS—SUPPLIES FURNISHED BY VESSEL'S AGENTS.

A firm made large cash advances on mortgage account to the captain of a steamboat whose home port was in another state, to pay off debts owing to third persons. This was done, as stated by one of the firm, for the purpose of "getting his business." Thereafter the firm acted for several years as the exclusive financial agent of the steamboat, collecting her bills, making advances to the captain from time to time to pay his crew, and for coal bills, commissions, insurance, interest, etc., and also furnishing supplies. *Held*, that the agency was of such a character as to preclude the idea that the supplies were furnished on the credit of the vessel, so as to create a maritime lien, although the firm may have thought that she was bound.

Appeal from the District Court of the United States for the Eastern District of Louisiana.

W. W. Howe, for appellants.
John D. Grace and Frank E. Rainold, for appellees.

Before PARDEE and McCORMICK, Circuit Judges, and BOARMAN, District Judge.

BOARMAN, District Judge. The libelants, L. P. Delahoussaye, Jr., bill clerk, and George Johnson, steward, of the defendant steamboat, filed their suit for wages, amounting to $94, in the district court for the Eastern district of Louisiana. Under the libel, process was issued, and the boat was seized. No claimant appearing, she was sold for $2,200, and the proceeds placed in the registry. A number of interveners, claiming for wages, supplies, etc., appeared in the suit. There is no dispute that the steamer St. John was a foreign vessel, having been enrolled and licensed in the state of Mississippi, and the domiciles of her owners and masters were in that state. The matters in the suit were referred to a commissioner, to take evidence, and report thereon; and all the claims favorably passed on by the commissioner were allowed without objection. Among those interveners are the appellants, E. Conery & Son, who intervened for a supply bill against the steamer for $769.42. All the supply claims prosecuted by the interveners were allowed except appellants' claim, which was rejected by the commissioner in his findings and report; and, appellants having excepted to such findings, the court below sustained the commissioner's rulings on E. Conery & Son's claim, for "the reason that E. Conery & Son, interveners and exceptors, were the agents of the steamboat St. John; and the presumption of law is that, as such agents, the advances or supplies they made were on the personal credit of the owners of the steamboat, which pre-

[1]Rehearing denied April 21, 1896.