

Counsel for Appellants.

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the language of the statute. It was not the function of the Postmaster General to sit in judgment on the policy of legislation and to determine the extent to which Congress should authorize the expenditure of public moneys. The question of expense was entirely for the legislative branch of the Government.

Something has also been said as to the discretion committed to the Post Office Department in determining what is and what is not second class mailable matter. But what about the discretion with which previous Postmasters General had been invested, when for many years they uniformly held that such publications as the plaintiffs' were second class mailable matter? Is the discretion of one Postmaster General to be deemed of more importance than the discretion of five of his predecessors in office?

In our opinion the law is for the appellants, and it should have been so adjudged.

SMITH v. PAYNE.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

No. 481. Argued March 10, 1904.—Decided April 11, 1904.

What are periodicals and second class matter decided on authority of *Houghton v. Payne*, ante, p. 88.

THIS was also a bill, filed by the firm of Street & Smith, to enjoin the Postmaster General from cancelling certain certificates of entry admitting the publications of complainant firm to the mail as second class mail matter. This case took the same course as the preceding one.

Mr. Tracy L. Jeffords, with whom *Mr. Charles F. Moody* and *Mr. E. Van Buren Getty* were on the brief, for appellants.

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Opinion of the Court.

*Mr. John G. Johnson and Mr. Henry H. Glassie, special assistants to the Attorney General, for appellee.*¹

MR. JUSTICE BROWN delivered the opinion of the court.

Plaintiffs are the publishers of several different series of novels under the names of The Columbia Library, The Bertha Clay Library, The Magnet Detective Library, The Medal Library, The Undine Library, The Eden Series, The Arrow Library, and some others. The books of these series are apparently of an inferior class of literature, and are numbered consecutively; but the only thing to indicate that they are issued periodically is a notice upon the outside of the back cover in small type that they are weekly or semi-monthly publications.

The considerations moving us to affirm the decree of the Court of Appeals in the case of *Houghton v. Payne*, just decided, apply with much greater persuasiveness to this case, and the decree dismissing the bill is, therefore

Affirmed.

MR. JUSTICE HARLAN and The CHIEF JUSTICE dissent in this case for the reasons stated in their dissenting opinions in *Houghton v. Payne*, *ante*, p. 88, and *Bates & Guild Co. v. Payne*, *post*, p. 106.

¹ For abstracts of arguments, see p. 88, *ante*