

No. 795.

## THE GLOBE-WERNICKE COMPANY

*v.*

BALTIMORE & OHIO SOUTHWESTERN RAILROAD COMPANY; BALTIMORE & OHIO RAILROAD COMPANY; BOSTON & ALBANY RAILROAD COMPANY; BOSTON & MAINE RAILROAD COMPANY; CHESAPEAKE & OHIO RAILWAY COMPANY; CINCINNATI, HAMILTON & DAYTON RAILWAY COMPANY; CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY; DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY; ERIE RAILROAD COMPANY; GRAND TRUNK RAILWAY SYSTEM; LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY; LEHIGH VALLEY RAILROAD COMPANY; OHIO CENTRAL LINES; PENNSYLVANIA RAILROAD COMPANY; PENNSYLVANIA COMPANY; PENNSYLVANIA LINES WEST OF PITTSBURG; PITTSBURG, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY; PHILADELPHIA & READING RAILWAY COMPANY AND WABASH RAILROAD COMPANY.

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*Decided August 10, 1905.*

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While there is much to support the view that sectional bookcases might properly be placed in the first class of the Official Classification, it does not appear upon the proofs presented that one-and-one-half times first class rates for all bookcases is an unlawful discrimination against the sectional variety, and the action of defendants in fixing the same classification and rates for sectional as for other bookcases does not exceed the limits of their discretion; nor is defendants' one-and-one-half

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times first class rate for the transportation of sectional and other bookcases shown by the record to be unreasonable. Complaint dismissed without prejudice to further investigation.

*E. P. Wilson* for complainant.

*Edward Colston* for Baltimore & Ohio Southwestern Railroad Company.

*S. O. Bayless* for Cleveland, Cincinnati, Chicago & St. Louis Railway Company; Boston & Albany Railroad Company; Erie Railroad Company; Lake Shore & Michigan Southern Railway Company; and New York Central & Hudson River Railroad Company.

*Ramsey, Maxwell & Ramsey* for Pennsylvania Railroad Company; Pennsylvania Lines West of Pittsburg; and Pittsburg, Cincinnati, Chicago & St. Louis Railway Company.

*Frederick W. Stevens* for Cincinnati, Hamilton & Dayton Railway Company.

#### REPORT AND OPINION OF THE COMMISSION.

*KNAPP, Chairman:*

The complaint in this case relates to the rates exacted by defendants for transporting "sectional" or "elastic" bookcases in less than carloads from Cincinnati, Ohio, to other points in Official Classification territory, which comprises practically all that portion of the United States north of the Ohio and Potomac rivers and east of the Mississippi river. Complainant alleges that these rates are unreasonable and unduly discriminatory, and therefore in violation of sections 1, 2, and 3 of the Act to regulate commerce, and asks for reparation on all shipments made by it over defendants' lines subsequent to January 1, 1903.

The Boston & Albany Railroad Company, in its answer, avers that since November 10, 1900, it has not been engaged in the business of transportation, and asks that as against it the complaint be dismissed. Neither the Ohio Central Lines nor the Pennsylvania Lines West of Pittsburg, as such, are engaged in the business of transportation. The Boston & Maine Railroad,  
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designated in the complaint as the Boston & Maine Railroad Company, did not file an answer and was not directly represented at the hearings. The other defendants each filed an answer denying the violations of law alleged in the complaint. The material facts are as follows:

Complainant is a corporation existing under the laws of Ohio. Its principal office and manufacturing plant are at Cincinnati. It is engaged in the manufacture, shipment and sale of office furniture and office specialties, including sectional or elastic bookcases. It ships the latter from Cincinnati to other points in the United States, and apparently does, also, some export business.

The railroad of the Boston & Albany Railroad Company is now and during all the time covered by the complaint has been operated by the New York Central & Hudson River Railroad Company, and the former company has not been engaged in the business of transportation since November 10, 1900.

The other defendants, except as above stated, are common carriers of interstate traffic and each of them is engaged, by its own line and in connection with other lines, in transporting complainant's bookcases from Cincinnati in the state of Ohio to points in other states in Official Classification territory and elsewhere.

The following description, given by complainant's president, applies to each of complainant's bookcases: "First, what we call a unit, which has a glass door, hung at the top, and which retires when lifted from the bottom, into the space above. This unit is so constructed that another unit fits on top of it, and fits closely. There is a strip on the top of each unit; and on the bottom of each unit is a recess into which that strip fits; and therefore the units fit together so they cannot readily move or shake apart. The joint at the end is covered by a metal strip, which gives it a finish, and also prevents shaking and slipping. The tops and bases are entirely separate units. Beginning at the bottom, with the base, units can be built up as high as may be desired, and when the desired height is reached the top is then added, and it presents a complete piece of furniture. There is also a device or locking attachment on the ends of each

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unit whereby one set can be built onto the ends laterally, and fastened together and present a solid appearance. So they can be built onto indefinitely, and can be built out horizontally as well as vertically.”

When presented to defendants for transportation a number of units is in each instance put into one package and protected by a crate, and each package is of such size and weight that it can be conveniently handled and packed in a car, but in no case does a single package contain all the units necessary to make a complete bookcase. The lumber used is generally oak, and while some of the packages contain glass used for doors this is so packed that it is seldom broken. During the year 1904 the total tonnage of bookcases shipped by complainant was 6,819,201 pounds, about 60% of which was shipped to points in Official Classification territory, but the total amount of damage claims presented by complainant to carriers in that territory for the period between January 1, 1904, and March 27, 1905, appears to be only \$59. Descriptions of the packages usually shipped, together with values, etc., are shown in the following table:

Description of package.	Weight in pounds.	Contents in cubic feet.	Weight of Crating.	Weight of glass.	List price.
20 D X Tops	200	20	31	—	\$35.00
10 D E Bases	123	24	35	—	17.50
6 D X Drawer Bases	126	15	26	—	16.50
6 D 8½ Units	122	18	24	10	16.50
6 D 10½ Units	135	21	26	13	18.00
6 D 12½ Units	143	24	27	16	19.50
6 C 11 Units	127	19	23	13	18.00
4 E 13½	120	19	25	11	18.00
4 E 13½	125	22	25	11	19.00
Comb. Units					
8 D X Tops and	179	25	36	—	28.00
8 D X Bases					
8 C X Tops and	169	22	38	—	28.00
8 C X Bases					
6 C 9½ Units	118	16	21	10	16.50
	1,687	245	337	84	\$250.50
Average	140-7/12	20-5/12	28-1/12	7	20.88
Subject to 25% discount from list price					15.66
Average weight per cubic foot about 7 pounds.					
Average value per cubic foot about 77 cents.					
Percentage of crating to gross weight about 20.					
Percentage of Glass to gross weight about 5.					

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The rate exacted on complainant's bookcases in each instance by defendants is  $1\frac{1}{2}$  times first class, in accordance with the Official Classification, and has been adopted and put in force on their lines by defendants and nearly, if not all, other carriers operating in that territory. The wording of the classification is as follows:

**Cases:**

Book, knocked down flat or folded flat, wrapped, crated or boxed, 2nd class.  
 Book, not otherwise specified, wrapped, crated or boxed,  $1\frac{1}{2}$  times 1st class.  
 Book, and Desks, same as bookcases.

Sectional or elastic bookcases, as such, are not mentioned in this classification, but are classified and rated the same as bookcases "not otherwise specified." Complainant insists that the classification and rating should not be higher than 1st class.

In what is known as the Southern Classification, which applies in territory south of the Ohio and Potomac rivers and east of the Mississippi river, bookcases are classified as below:

Bookcases, not otherwise specified, wrapped or crated, set-up,  $1\frac{1}{2}$  times 1st class.  
 Sectional or elastic, in tiers of not more than three sections each, boxed, 1st class.  
 Sectional or elastic, thoroughly taken apart and knocked down flat, boxed 2nd class.  
 Bookcases and Desks, combination, wrapped or crated, 1st class.

In the Western Classification, which applies in territory west of the Mississippi river and the Great Lakes, the classification is:

**Bookcases:**

Set-up, boxed, wrapped or crated,  $1\frac{1}{2}$  times 1st class.  
 Knocked down, tied in bundles,  $1\frac{1}{2}$  times 1st class  
 Knocked down, boxed or crated, 1st class.  
 Sectional, boxed, 1st class.  
 Sectional, crated,  $1\frac{1}{2}$  times 1st class  
 Sectional, knocked down flat, boxed 2nd class  
 Bookcases and Desks, combined, boxed, wrapped or crated,  $1\frac{1}{2}$  times 1st class.

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The above classifications and ratings apply only on less than carload shipments.

It will be seen that by boxing its shipments complainant can obtain 1st class rates in the Southern and Western Classification territories, while bookcases other than sectional, whether boxed, crated or wrapped, are charged 1½ times 1st class. The difference in cost to complainant between boxing and crating, although not definitely shown, is small, and complainant would be willing to box its shipments to points in Official Classification territory if by doing so it could obtain first class rates. The benefit to the carriers of boxing over crating is also small.

The classification of sectional bookcases in the Western and Southern territories was formerly 1½ times first class, but as above shown has been changed to first class. The change in the Western Classification was made upon application of complainant, but whether or not this is true concerning the change in the Southern Classification does not definitely appear.

Complainant also made application at different times to the Official Classification Committee, which has charge of matters pertaining to the Official Classification, for a reduction in the classification of its bookcases, but in each instance the relief sought was denied. Complainant's manufacturing plant is located adjacent to and reached only by the B. & O. S. W. Company's tracks.

The Cincinnati Freight Committee is an association of freight representatives of carriers whose lines run north, east and west from Cincinnati to points in Official Classification territory. This committee, in a communication to the Official Classification Committee, and after investigation and examination by one of its inspectors, recommended that the classification of complainant's bookcases be changed to 1st class, but this application and another similar application subsequently made by the Freight Committee to the Central Freight Association and by it referred, without other action, to the Official Classification Committee, were acted upon by the latter unfavorably to complainant. The Central Freight Association is composed of carriers operating in that portion of Official Classification ter-

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ritory bounded on the east, approximately, by a line drawn from Buffalo, N. Y., through Pittsburg, Pa., to Charleston, W. Va.

In speaking of the above recommendations the general freight agent of the B. & O. S. W. said: "We never would have recommended it if we had known it was going to affect other articles." But in referring to complainant's bookcases he also said: "They are just about entitled to a first class rating."

Sectional bookcases furnish a larger volume of traffic than any other article which is classified and rated in the Official Classification at  $1\frac{1}{2}$  times 1st class. There are in the United States about a dozen manufacturers of sectional bookcases, and their combined output is estimated at about 16,000,000 pounds per annum. It will be noticed that of this amount complainant's shipments constitute a little more than one-third.

Although complainant's bookcases are not shipped set-up, the different sections are, while some of the other manufacturers take the sections apart and ship them "knocked down flat." The latter are classified in the Official Classification as 2nd class, but their weight per cubic foot is between two and three times as much as the weight of complainant's shipments.

The dimensions of what is known as the standard box car are: Length 36 feet, width 8 feet and 6 inches, and height 7 feet and 6 inches; and into such a car about 12,000 pounds in weight of complainant's bookcases, as they are ordinarily presented to the carriers for transportation, can be loaded. From 60% to 75% of sectional bookcases, including those of complainant, are shipped in less than carload lots.

Complainant prepays the transportation charges on all its shipments, and sells its bookcases delivered at different points in Official Classification territory at a uniform price; that is to say, the selling price is in no way dependent upon the amount of transportation charges paid.

In Official Classification territory, shipments of sectional bookcases constitute somewhere from one-fourth to one-third of all shipments of bookcases classified in the Official Classification as  $1\frac{1}{2}$  times 1st class; and in the elements which should and do control in the making of classifications, as, for instance, weight per cubic foot, difficulty in handling, risk of damage or

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loss, value, etc., bookcases other than sectional compare favorably with complainant's bookcases, as ordinarily shipped, except that, as a whole, the latter are somewhat more convenient to handle and furnish, possibly, a little more weight per cubic foot. The former vary considerably in size, in weight per cubic foot and in total weight, and in difficulty of handling; but the average weight per cubic foot appears to be about 6½ pounds, and while some of the bookcases can be handled as quickly and easily as complainant's shipments, others can not. Apparently, complainant's shipments are somewhat less liable to be damaged while in transit, but the item of damage is not very important.

Complainant's president named a few other freight articles which are classified in the Official Classification as first class, and said he believed they are no more entitled to that classification than complainant's bookcases are. The articles referred to are as follows: Railroad ticket cases; sewing machine cabinets; bureau glass, framed; bureaus, crated; chiffoniers; dressing cases; copying press stands, and washstands. The principal reason advanced by defendants for giving these articles the lower classification is their greater weight per cubic foot; but concerning this weight there is much conflict in the testimony. However, we think it fairly appears, when all shipments are considered, that the average weight of these articles is somewhat greater than, although not 1½ times as great as, the average weight of complainant's shipments.

At 1½ times 1st class rates complainant's bookcases are probably somewhat more remunerative to defendants than any other traffic taking the same rates. If put into 1st class these bookcases would be less desirable traffic, from the carrier's standpoint, than any one of the large majority of articles now accorded a 1st class rating, though they would pay the carriers rather better than a number of articles now carried at first class rates.

In the Official Classification, freight articles to the number of 8,000 or more are arranged in classes numbered from 1 to 6 inclusive, except that there are two subdivisions designated 15% below 2nd class and 20% below 3d class. Carriers operating in Official Classification territory are legally free to make  
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classifications which differ from those in the Official Classification, but in point of fact they seldom do so.

Although there is great similarity in classification in the different classification territories, many disparities exist which produce much inconvenience and often actual injury.

#### CONCLUSIONS.

The foregoing facts indicate that complainant's request for first class rating of sectional bookcases should be fairly considered by the carriers in Official Classification territory. This kind of bookcase has been voluntarily placed in the first class by both the Southern and the Western Classification Committees, and there is much reason to believe that it might properly receive the same treatment by the Official Classification Committee. It does not follow, however, that one and one half times first class rates for all bookcases is an unlawful discrimination against the sectional variety, which is one of the questions presented by this record, and we are not satisfied that there is such difference between the bookcase of complainant and other bookcases as to require a lower rating for the former than for the latter. To establish discrimination in rates resulting from the classification of articles of the same general character there must be preponderating proof in favor of a complaining party, and we are constrained to hold that the evidence in this case is not of that decisive character. Upon the proofs presented we are of the opinion that the sectional bookcase is not entitled to a different and lower rating than is applied to other bookcases and that the action of the carriers in fixing the same classification and rates for sectional as for other bookcases does not exceed the limits of their discretion.

Nor are we convinced upon the showing now made that one and one half times first class rates are unreasonable, within the meaning of the first section of the act, for the transportation of bookcases, including the sectional variety in Official Classification territory. We do not decide that these rates are reasonable; we merely hold that they have not been proven otherwise. In a word, the Commission will not be precluded by anything said in this report from holding, upon further investigation of the sub-

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ject, that one and one half times first class rates on ordinary bookcases, whether sectional or otherwise, are excessive and unlawful. Upon the facts now appearing we are of the opinion that complainant is not entitled to a mandatory order and its petition will therefore be dismissed without prejudice.

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