

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

No. 505

JAMES H. MULFORD ET AL., APPELLANTS

*vs.*

NAT SMITH ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR  
THE MIDDLE DISTRICT OF GEORGIA

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**In the District Court of the United States for the  
Middle District of Georgia, Valdosta Division**

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In Equity No. 97

JAMES H. MULFORD ET AL., PLAINTIFFS

v.

NAT SMITH ET AL., ORIGINAL DEFENDANTS

and

UNITED STATES OF AMERICA, INTERVENING DEFENDANT

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**PLEADINGS OF PARTIES AND ORDERS OF COURT**

On the 27th day of July 1938, plaintiffs filed, in the Superior Court of Lowndes County, Georgia, their bill of complaint, with exhibits attached thereto, the same being as follows:

GEORGIA, LOWNDES COUNTY.

*To the Superior Court of said State and County:*

The petition of James H. Mulford and others similarly situated whose names are included in an Exhibit to this petition, and others similarly situated who may intervene in this cause respectfully shows;

1.

That the names of all of petitioners are written on a sheet or sheets attached hereto marked Exhibit "A" and made a part of this petition.

2.

That the parties herein named as defendants are certain tobacco warehousemen doing business in the City of Valdosta, Lowndes County, Georgia, each of whom are residents of said State and County, their names being as follows: Nat Smith, doing business as Nat Smith Warehouse, and also as Nat Smith Brick Warehouse, B. B. Saunders, doing business as B. B. Saunders Warehouse No. 1 and also as B. B. Saunders Warehouse No. 2, Murrell Holderby and C. R. Townsend, doing business as Savannah Warehouse, and Lee Moore doing business as Alliance Warehouse.

(1)



2

3.

That all of petitioners are residents either of the State of Georgia or of the State of Florida.

4.

That plaintiffs have mutually agreed among themselves to join together in this suit against said warehousemen instead of filing separate suits, for the reason that, as is hereinafter shown, each plaintiff is asserting the same right against each defendant, each seeks the same relief against each defendant, and the relief sought by each depends on the same issues, requires the same evidence, and will lead to the same decree; and by joining together in this action, a multiplicity of suits will be avoided, large court costs and other expenses will be saved, the necessity of many separate trials will be obviated, and the convenience of justice will be promoted.

5.

Petitioners further show unto the court that they are separately engaged in general farming and that, among other things, each grower raises and produces what is commonly called flue-cured tobacco, and that the customary method of marketing said tobacco is through tobacco warehouses such as are operated by each of defendants.

6.

That it is the custom and it is the intention of plaintiffs to market their 1938 crop of tobacco at the said warehouses in Valdosta, and that practically the only method or means that petitioners have of marketing their tobacco is in said warehouses or similar warehouses.

7.

That each of said defendants operates in the City of Valdosta, Lowndes County, Georgia, one or more auction tobacco warehouses where during the tobacco season farmers haul and place their tobacco to be sold at public auction, and that during the tobacco season of 1938 which will begin July the 28th, 1938, and continue until approximately September 1st, 1938, each of said defendants will secure and have at his warehouse tobacco buyers who will at public outcry buy in such tobacco as is offered for sale by said farmers who have tobacco for sale.

8.

Petitioners further show unto the court that Congress passed an Act which was approved February 16th, 1938, entitled "An Act to Provide for the conservation of natural soil resources and to produce an adequate and balanced flow of agricultural commodities in Interstate and Foreign Commerce and for other Purposes", com-

monly known as the "Agricultural Adjustment Act of 1938", and that among other things said Act contains provisions respecting the marketing of tobacco and authorizing the Secretary of Agriculture under certain conditions to put into effect certain marketing quotas therein referred to, certain provisions of which bill materially regulating the production and marketing of tobacco being attached hereto, marked "Exhibit B" and made a part of this petition.

## 9.

That, under and by virtue of the provisions of said Act above quoted, the Secretary of Agriculture individually or through his agents and committees has presumably fixed and determined the marketing quota or the amount of tobacco by pounds to be allotted to the farmers who have raised and are to sell tobacco during the year 1938, including plaintiffs, and that by virtue of this procedure there has been allotted or probably will be allotted to each of plaintiffs "a quota" designating the number of pounds that may be sold free from penalty from each farm, including the farm of each of the plaintiffs.

## 10.

Plaintiffs aver that at the time of preparation of this bill none of them had been notified of the exact quota allotted to each of them or to the farm cultivated by each of them during the year 1938, but plaintiffs allege that each of them have raised and produced an amount of tobacco in excess of the quota if any allotted or to be allotted to each of them. None of plaintiffs know the exact amount of pounds that will be raised by him or her, and therefore none of plaintiffs are in a position to state the amount that he or she will have produced in excess of said quota, and is therefore not in position at this time to state the exact amount of said excess.

## 11.

That by reason of the fact that each of plaintiffs has produced more tobacco in pounds than has been allotted or will be allotted to him under the procedure above outlined, each petitioner is subject to be penalized under the provisions of said Act as above set forth, and upon the sale of said tobacco on the warehouse floors of each of said defendants, under the provisions of said Act, each of said defendants will be permitted to deduct an amount equivalent to the penalty proscribed in said Act, which is fifty per cent of the sales price on the day of marketing, or 3¢ per pound in case this rate is higher than said fifty per cent. Said penalty if enforced against the farmer is more than sufficiently large to cause the farmer, including each of petitioners, to receive for his "excess" tobacco a price far below the average cost of production, and, therefore, if enforced, will result in coercing tobacco farmers, including petitioners, to reduce their future tobacco acreage to the extent contemplated by said Act.

12.

Plaintiffs are informed, believe and charge that it is the intention of each of said defendants and that each of them has announced it is his intention, that, at the time tobacco is sold in his warehouse, he will deduct an amount equivalent to said penalty in accordance with the provisions of said Act, and that he will in accordance with said provisions, forward the amount of same to the Secretary of Agriculture and that in no event pay said penalty himself or any portion thereof, but that the same will come out of the amount that shall be paid each of plaintiffs for his said tobacco, and that in paying for said tobacco each of said defendants will issue check to the seller only for the amount that will be left after deducting the amount of said penalty plus the usual commissions and costs of sale, and that, therefore, the burden of paying said penalty will thereby be cast upon each of the plaintiffs, and that the defendants will not in any way be affected thereby. Plaintiffs further allege, therefore, that while said Act purports to place a penalty against the warehousemen, in truth and in fact the penalty is placed upon each of the plaintiffs, thereby penalizing each of the plaintiffs for producing on the farms worked by him, an amount of tobacco in excess of what the Secretary of Agriculture authorizes him to produce on said farm free of penalty.

13.

Plaintiffs allege that the cultivation, production and sale of tobacco by each of them constitutes solely the business of farming, and denies that the production or sale of said tobacco directly affects or obstructs the free flow of Interstate or Foreign Commerce, nor does it constitute a burden on said commerce, but that it is solely and wholly a portion of the business of farming.

14.

Plaintiffs further allege that the amount of pounds raised by each of them respectively in excess of said quota will vary from six hundred pounds to twenty-five thousand pounds, and that in their opinion the fair average market value of same will be approximately 15 to 20 cents per pound.

15.

Plaintiffs further show to the court that, unless the said defendants are enjoined from deducting the amount of said penalty from the price paid for the tobacco of each of plaintiffs, said penalty will be deducted from said price resulting in the loss of same to each of said plaintiffs by reason of the fact that none of said defendants are financially able to respond in damages and pay to plaintiffs the amount of said penalties, after they shall have been remitted to the Secretary of Agriculture and that, in the event plaintiffs recover

judgment against said warehousemen or any of them, for said amounts, said judgments will not be collectible and same will be worthless, and that therefore these plaintiffs will have no adequate remedy at law to recover same, and their damages will be irreparable.

## 16.

Plaintiffs allege that said warehousemen have no legal or constitutional rights to deduct said penalty in the manner hereinbefore outlined or in any other manner, and that they and each of them should be restrained and enjoined by this court from deducting said penalty from the price for which each of plaintiff's tobacco will be sold.

## 17.

Plaintiffs further allege that said restraining order and injunction should issue because of the fact that said Act hereinbefore referred to, and particularly that portion of same hereinbefore quoted, is violative of and repugnant to the provisions of the constitution of the United States in the following particulars, to-wit:

(a) It is repugnant to and violative of the Tenth Amendment to the Constitution of the United States which reads as follows: "The powers not delegated to the United States by the Constitution nor prohibited by it to the States, are reserved to the States respectively, or to the people," in that, that portion of said Act hereinbefore quoted is an attempt by Congress to exercise a nonexistent police power over the property of petitioners; it legislates on a subject and in relation to a power not delegated to the United States but reserved to the States; it constitutes an unpermissible attempt to regulate and control the growth, production and sale of tobacco within a State, the same being transactions intrastate in character; it assesses and attempts to collect a penalty for a purpose and for the exercise of a power not delegated to the United States by the Constitution; under the pretended exercise of such power it attempts an unconstitutional control and regulation of the business of farming; it is not a valid regulation on any subject on which the United States has the power to legislate and particularly is not a valid regulation of Interstate and Foreign Commerce under the provisions of Article 1, Section 8, Clause 3, of the Constitution of the United States, because the guise of such regulation is obviously a pretense and subterfuge, and the manifestly true intent and effect of the provision of said Act above quoted, constitutes an unpermissible regulation and control of the growth, production and sale of tobacco within the States, the same being transactions not interstate in character, but intrastate, and not directly affecting interstate or foreign commerce, and said provisions of said Act constitute not a regulation but in effect a prohibition of Interstate Commerce with respect to the commodity of tobacco.

(b) Because the regulation of the business of farming within the States is beyond the constitutional power of Congress.

(c) Said Act is violative of and repugnant to the provisions of the Fifth Amendment to the Constitution of the United States, providing that no person shall be deprived of life, liberty, or property without due process of law, in that said penalty is assessed and its collection attempted without giving any of plaintiffs an opportunity to be heard in any court of law or equity respecting the legality or constitutionality of same.

(d) Said Act is violative of and repugnant to the provisions of the Seventh Amendment to the Constitution of the United States by reason of the fact that it requires each of plaintiffs to pay a penalty without a hearing, information or trial by a jury.

(e) Said Act is violative of and repugnant to the Fourteenth Amendment of the Constitution of the United States because it does not afford to plaintiff equal protection of the laws with others, who are permitted to sell all tobacco raised by them without a penalty.

(f) Said Act is unconstitutional and illegal because it tends to create a monopoly in the production and sale of tobacco by the citizens of certain States to the detriment of citizens of other States, and prevents the citizens of certain States, particularly Georgia and Florida, from expanding in the production, growth, and sale of tobacco to the benefit of the citizens of other States.

WHEREFORE waiving discovery plaintiffs pray as follows:

(1) That the plaintiffs be permitted to maintain this suit by joining together as plaintiffs and by joining said warehousemen as defendants.

(2) That said defendants and each of them, be permanently restrained and enjoined from collecting and deducting and from retaining or remitting to the Secretary of Agriculture of the United States the amount of said penalty from the sales price of the tobacco to be sold by each of these plaintiffs.

(3) That pending the final hearing in said cause, each of said defendants be temporarily restrained and enjoined from deducting the amount of said penalty from the price to be paid each of said plaintiffs for his said tobacco, and from remitting same to said Secretary of Agriculture.

(4) That a rule nisi directed to said defendants issue requiring them to be and appear at a place and time named to show cause why the prayers of this petition should not be granted.

(5) That plaintiffs have such other and further relief in the premises as to the court may seem fit and proper.

(6) That process may issue directed to said defendants requiring them to be and appear at the next term of this court to answer this complaint.

A. J. LITTLE,  
C. A. AVRIETT,  
J. L. BLACKWELL,  
*Attorneys for Petitioners.*

## EXHIBIT "A"

<i>Name of plaintiffs</i>	<i>Name of plaintiffs</i>
J. H. Bullard & J. H. Bishop	M. L. Harrell
A. L. Tyre	George Copeland
Edgar Bembry	F. P. Philpot & Fletcher
Pennewell Kelly	L. B. Gravely & Sam Jones
Gordon Huggins	L. B. Gravely & J. L. Cribb
J. C. Stone	L. B. Gravely & Williams
D. R. Kirman	P. J. Norfleet
J. H. Corbett	T. L. Weeks
R. H. Holton	Cone Osteen
J. B. Bryant	L. A. Tyre
Rube McGhin	W. W. Roberson
Major Lee	Frank Wright
G. L. Bullard	W. J. Suggs
Wallace Dees	F. N. Bullard
J. Y. Register	H. W. Bethea
J. E. Jacobs	E. D. Norfleet
W. T. Holton	Smith & Carlisle
D. H. Holton	Willis Holder & Wiggins
J. H. Tyre	Wright Boone & Cravely
Joe Gay & C. A. Avriett	Wright & Company & Anderson
Israel Smith & C. A. Avriett	Wright & Company & Scarborough
A. Royals & C. A. Avriett	B. H. Alderman
J. T. Bridges	H. G. Carter
R. B. Riley	O. B. Taylor
W. R. Bennett	Bill Parker
Bert Zipperer	L. A. Young
Perry Dempsey	S. P. Dowdy
Harry Johns	G. W. Rogers
J. M. Jackson	Shady Demps
L. B. Gravely & W. J. S. Hodge	Miss Hazel Rogers
L. B. Gravely and J. H. Mayo	Jim Gadson
L. B. Gravely and F. L. Mayo	J. T. Owens
W. N. Barry	Eddie Brown
L. B. Gravely and J. C. Long	C. C. Owen, Major Hooks &
Wm. Haddock	Peach Evans
L. B. Gravely & Joe Hightower	B. B. Rogers & Walter Mixon
L. B. Gravely & E. Hightower	L. C. Coody
P. A. Levionen	O. T. Hawkins
L. B. Gravely & L. N. Sirmans	H. J. Williams
L. B. Gravely & Sirmans Bros.	Joe Patterson & B. C. Latner
L. B. Gravely & R. L. Fralick	J. L. Witt
Gravely Smith & Bass	L. L. Allen
J. O. Hunnicutt	R. W. Howell
J. C. Weeks	Martin Baker
Sam Harrell	

<i>Name of plaintiffs</i>	<i>Name of plaintiffs</i>
H. D. Bullard	Willie Kirby
R. B. Goode	J. F. McCall
W. N. Norfleet	Joe Moody
V. M. Chastain	Ida J. Merritt
L. B. Gravely	Jas. H. Mulford
Wright & Company & Bullard	W. J. Pope
L. B. Gravely & Ben Dawson	L. R. Shealey
L. B. Gravely & L. R. Hodge	J. W. Simmons
Ben Moseley	C. J. Southwell
Z. O. Daniels	A. A. Witt
William McKeithen	B. A. Witt
H. L. Smith & J. H. Rogers	Ellory Witt
J. V. Fletcher	Harold Witt
Clyde Stewart	J. S. Witt
B. B. Rogers	S. F. Young
William McKinley	Arthur Postell
Charlie Brown	J. A. Bailey
A. C. Coody	L. G. Bailey
Charlie Brown	P. C. Bullard
Woods Brothers	J. W. Cullen
Joe Robinson	John Dampier
Will Brown	G. B. Feagle
B. B. Rogers & K. E. Thomas	H. R. Faulkner
A. M. Rowe	D. F. Feagle
T. R. Keeling	Maxie Feagle
Mrs. H. A. Woods	G. G. Graham
J. W. Cozart	Eugene Hall
J. D. Goff	S. L. Jones
M. L. Stutts	Henry Kirby
June Baker	S. S. Kirby
Bessie Cowart	J. W. Lewis
J. J. Johnson	Lonnie Mann
Collie Postell	F. M. Merritt
M. B. Bailey	I. L. Merritt
Varence Bailey	Haskell Morris
M. M. Chesser	Joel H. Parrish
A. L. Crosby	Alver Simmons
Edgar Dutch	Carlton Southwell
L. J. Flannigan	N. G. Thomas
Cline Feagle	A. C. Witt
F. C. Feagle	Earnest Witt
Dill Glover	Glenn Witt
J. W. Goodge	J. J. Witt
G. W. Jordan	W. T. Witt
J. T. Kirby	J. L. Miller & P. V. Saunders
R. C. Kirby	

<i>Name of plaintiffs</i>	<i>Name of plaintiffs</i>
Henry Horton & P. V. Saunders	Vester Driver & P. V. Saunders
Fullard Wilder & P. V. Saunders	Jerry Driver & P. V. Saunders
Frank Sullivan & P. V. Saunders	

## EXHIBIT "B"

[This exhibit, which merely sets forth Section 312 (a), (b), (c), (d), and (e); Section 313 (a), (b), (c), and (d), and Section 314 of the Agricultural Adjustment Act of 1938, is omitted in the printing hereof by agreement of counsel.]

## GEORGIA, LOWNDES COUNTY:

Before the undersigned officer duly authorized by law to administer oaths, personally appeared P. V. Saunders, who deposes and on oath says that he is one of the petitioners named in the attached and foregoing petition, and that the allegations of fact therein set out are true.

P. V. SAUNDERS.

Sworn to and subscribed before me this the 27th day of July 1938.

ELMA LANG,  
*Notary Public, Lowndes County, Ga.*

On the 27th day of July 1938, the following order was entered upon the foregoing bill of complaint:

The foregoing petition read and considered. The same is sanctioned and ordered filed. Let a copy of same, together with a copy of this order be promptly served on each of defendants.

It is ordered that defendants, and each of them show cause before me at the Court House in Valdosta, Lowndes County, Georgia, at ten o'clock A. M., on the 6 day of Aug. 1938, why the prayers of said petition should not be granted and why they should not be restrained and enjoined as therein prayed for, and why the following additional orders of this Court should not remain in force.

In the meantime, and until the further order of this Court, each of the defendants is restrained and enjoined from deducting the penalties referred to in said petition, and remitting same to the Secretary of Agriculture of the United States, or any of his agents, or to any other person except as is hereinafter provided.

For the protection of all parties to this cause, as well as for the protection of the rights, if any, of any other parties who may be interested in the disposition of the funds involved in this litigation; it is further ordered and adjudged as follows:

Until the further order of this Court, each of said defendants is required to keep an accurate account or record of the pounds of tobacco over and above the so called "quota" allotted to each of said



plaintiffs and sold for each of said plaintiffs in each of said warehouses, respectively, together with a record of the price paid therefor. The warehousemen shall deduct from said price the equivalent of the penalty assessed under the provisions of the Act of Congress referred to and quoted in Exhibit B of said petition, and, within a reasonable time, not to exceed ten days from the date of the sale, shall pay the equivalent of said penalty or penalties to the Clerk of this Court, and shall simultaneously deliver to him a duplicate record signed by the warehouseman showing the number of pounds of each such sale, the name of the owner, and price paid for said tobacco and the amount of the penalty deducted in each sale and delivered to the Clerk. The Clerk shall retain one copy of said record and file same as a part of the record in this case. He shall return the other copy to the warehouseman with his receipt written thereon. Each payment and record may include any number of sales that may have been made subject to these provisions.

The funds thus delivered to the Clerk shall be by him deposited in either the Citizens & Southern National Bank or the First National Bank of Valdosta, in Valdosta, Georgia, and shall be deposited to a special account designated as "tobacco account, by T. B. Converse, Clerk," none of which shall be subject to withdrawal except upon the order of this Court, a copy of which shall be by the Clerk delivered to said Bank.

Let defendants, either separately or jointly, file their answers to this petition at least one day prior to the date hereinbefore assigned for a hearing of this cause and deliver a copy of same to counsel for petitioners; and it is so ordered this the 27th day of July 1938.

W. E. THOMAS,

*Judge Superior Court, Southern Circuit.*

On the 27th day of July 1938, the following order was entered by the Superior Court of Lowndes County, Georgia:

STATE OF GEORGIA, LOWNDES COUNTY

JAMES H. MULFORD, ET AL.,

*vs.*

NAT SMITH, B. B. SAUNDERS, MURRELL HOLDERBY AND C. R. TOWNSEND,  
AND LEE MOORE

*Suit on complaint*

Superior Court of Lowndes County, Ga. November Term 1938

*To all and Singular the Sheriff and His Lawful Deputies of  
Lowndes County, Georgia:*

The Defendants are hereby required, in person or by Attorney, to be and appear at the next term of the Superior Court of Lowndes

County, to be held in and for said County on the third Monday in November 1938, then and there to answer Plaintiff's Complaint. In default whereof, the Court will proceed thereon as to justice shall appertain.

Witness the Honorable W. E. Thomas, Judge of said Court, this the 27th day of July 1938.

T. B. CONVERSE,  
*Clerk.*

On the 27th day of July 1938, the following return was made by J. L. Spivey, Sheriff of Lowndes County, Georgia:

GEORGIA, LOWNDES COUNTY:

I have this day personally served a true and correct filed copy of the within petition and order of Court on each of the following defendants named therein: Nat Smith, doing business as Nat Smith Warehouse and also as Nat Smith Brick Warehouse, B. B. Saunders, doing business as B. B. Saunders Warehouse No. 1, and also as B. B. Saunders Warehouse No. 2, Lee Moore, doing business as the Alliance Warehouse, and on Murrell Holderby, one member of the partnership of Murrell Holderby and C. R. Townsend, doing business as Savannah Avenue Warehouse. C. R. Townsend is not at present in Lowndes County. This 27th day of July 1938.

J. L. SPIVEY,  
*Sheriff Lowndes County, Georgia.*

On August 3, 1938, J. A. Ives and numerous others, upon petition filed on their behalf by the same counsel representing plaintiffs, were allowed by order of the Superior Court of Lowndes County, Georgia, to intervene as parties plaintiff, adopting each and every allegation and the prayers of the original petition filed by plaintiffs. Said petition and the order thereon are omitted in the printing hereof by agreement of counsel.

On August 5, 1938, the defendants filed in the Superior Court of Lowndes County, Georgia, their petition for removal of the case to the District Court of the United States for the Middle District of Georgia, Valdosta Division, together with their removal bond in the amount of \$500 and written notice to the plaintiffs of the removal, with acknowledgment by counsel for plaintiffs and interveners of service, said petition for removal, bond, notice, and acknowledgment of service being as follows:

## In Lowndes County (Georgia) Superior Court

November Term, 1938

JAMES H. MULFORD ET AL., PLAINTIFFS, J. A. IVES ET AL., INTERVENERS,  
*vs.*

NAT SMITH, DOING BUSINESS AS NAT SMITH WAREHOUSE AND ALSO AS  
NAT SMITH BRICK WAREHOUSE, B. B. SAUNDERS, DOING BUSINESS  
AS B. B. SAUNDERS WAREHOUSE No. 1 AND ALSO AS B. B. SAUNDERS  
WAREHOUSE No. 2, MURREL HOLDERBY AND C. R. TOWNSEND, DOING  
BUSINESS AS SAVANNAH AVENUE WAREHOUSE, AND LEE MOORE,  
DOING BUSINESS AS ALLIANCE WAREHOUSE

*Equitable petition for injunction, etc.*

*To the Superior Court of Lowndes County, Georgia:*

The petition of the defendants in the above entitled cause respectfully shows to this court:

1.

That petitioners are defendants in the above entitled cause.

2.

That this suit was duly commenced in this court and is of a civil nature arising under the Constitution and laws of the United States, in that this case involves a Federal question, that is, whether or not the plaintiffs and interveners herein are entitled to enjoin the defendants from complying with the obligations imposed upon them by the provisions of Title III of the Agricultural Adjustment Act of 1938, approved February 16, 1938 (52 Stat. page 31), as amended.

3.

The plaintiffs allege in their bill of complaint filed herein that the said Act is violative of and repugnant to the provisions of the Constitution of the United States, and that the performance on the part of the defendants of the obligations imposed upon them by the said Act will result in irreparable injury to the plaintiffs. There exists, therefore, a controversy between the plaintiffs, including interveners and defendants, the correct decision of which depends upon the construction of the Constitution of the United States and the validity of said Act, enacted by Congress in pursuance thereof, and the title or right set up by the plaintiffs may be defeated by one construction or sustained by an opposite one.

4.

That said Act regulates all marketing of tobacco as in and directly affecting interstate and foreign commerce and imposes a

penalty upon the marketing of tobacco in excess of the marketing quotas fixed in accordance with the provisions of the said Act. Such penalties are payable by the defendants to the Secretary of Agriculture, who is required to cover them into the general funds of the Treasury of the United States, and said Act gives to the defendants the right to deduct an amount equivalent to the penalties so paid from their payments to plaintiffs, including interveners, for tobacco belonging to the plaintiffs, including interveners, marketed to or through the defendants. This suit and these proceedings, therefore, arise under a law of the United States regulating interstate and foreign commerce and the respective rights of plaintiffs, including interveners, and defendants depend upon the validity of said law.

5. That the time in which defendants herein are required by the laws of the State of Georgia, and the rules and practices in said State Court to answer or plead in said suit, has not yet expired.

6. That said defendants make and file herewith a bond in the sum of Five Hundred Dollars (\$500.00), with good and sufficient security for its entering the District Court of the United States for the Middle District of Georgia, Valdosta Division, within thirty days of the filing of this petition, a certified copy of the record of this suit and for paying all costs that may be awarded by said District Court, if it should hold that said suit was wrongfully or improperly removed from said State Court.

Wherefore, said defendants pray that this court proceed no further herein, except to accept this petition and said bond.

(S) FRANKLIN & EBERHARDT,  
*Attorneys for the Defendants.*

**GEORGIA, LOWNDES COUNTY.**

Before the undersigned, an officer duly authorized by law to administer oaths, personally appeared B. B. Saunders, who, being duly sworn, deposes and says that he is one of the defendants named in the foregoing petition, and that the facts alleged therein are true so far as they come within his own knowledge, and he believes them to be true so far as they are derived from the knowledge of others.

(S) B. B. SAUNDERS.

Sworn to and subscribed before me this August 5, 1938.

(S) H. B. GLISSON,  
*Notary Public, State Ga. at Large.*

[Caption omitted in printing.]

Know all men by these presents, that we, Nat Smith, B. B. Saunders, Murrel Holderby and C. R. Townsend, doing business as Savannah Avenue Warehouse, and Lee Moore, as defendants, principals, and Jas. Y. Blitch and Wm. L. Goodloe, as securities, of Lowndes County, Georgia, are held and firmly bound unto James H. Mulford et al., who appear as parties plaintiff in the above case, on the original petition therein, and also unto said interveners, in the penal

sum of Five Hundred Dollars (\$500.00) for the payment of which, well and truly to be made unto the said James H. Mulford and said other plaintiffs in said cause, including said interveners, their heirs, executors, administrators and assigns, we bind ourselves, our successors and assigns, jointly and severally by these presents;

Upon condition, nevertheless, that, whereas, the said Nat Smith, B. B. Saunders, Murrel Holderby and C. R. Townsend, doing business as Savannah Avenue Warehouse, and Lee Moore have filed their petition in the Superior Court of Lowndes County, Georgia, for the removal of a certain cause herewith pending, wherein the said James H. Mulford and others named as plaintiffs and interveners in said cause are plaintiffs and interveners, respectively, and the said Nat Smith, B. B. Saunders, Murrel Holderby and C. R. Townsend, doing business as Savannah Avenue Warehouse, and Lee Moore are defendants, to the District Court of the United States for the Middle District of Georgia, Valdosta Division.

Now, if the said Nat Smith, B. B. Saunders, Murrel Holderby, and C. R. Townsend, doing business as Savannah Avenue Warehouse, and Lee Moore shall enter in said District Court of the United States within thirty days from the date of filing said petition for removal, a certified copy of the record in said case, and shall well and truly pay all costs that may be awarded by said District Court of the United States, if the said Court shall hold that the suit was wrongfully or improperly removed thereto, then will this obligation be void; otherwise it shall remain in full force and virtue.

In witness whereof the said Nat Smith, B. B. Saunders, Murrel Holderby, and C. R. Townsend, doing business as Savannah Avenue Warehouse, and Lee Moore, as principals, and the said Jas. Y. Blicht, and Wm. L. Goodloe, as securities, have set their hands and affixed their seals on this the 5th day of August 1938.

[SEAL] (S) NAT SMITH,  
By (S) O. W. FRANKLIN,  
*His Attorney at Law.*

[SEAL] (S) MURREL HOLDERBY,  
*Principal.*

[SEAL] (S) C. R. TOWNSEND,  
*Principal.*

Doing Business as Savannah Avenue Warehouse.

By (S) O. W. FRANKLIN,  
*Their Attorney at Law.*

[SEAL] (S) LEE MOORE,  
*Principal.*

By (S) O. W. FRANKLIN,  
*His Attorney at Law.*

[SEAL] (S) B. B. SAUNDERS,  
*Principal.*

Witnesses as to the execution of principals:

(S) GEO. C. McCRARY, Jr.  
 (S) H. B. GLISSON.  
 [SEAL] (S) JAS. Y. BLITCH,  
*Security.*  
 [SEAL] (S) WM. L. GOODLOE,  
*Security.*

Witnesses as to the execution of security:

(S) GEO. C. McCRARY, Jr.  
 (S) O. W. FRANKLIN, Jr.

[Caption omitted in printing.]

TO JAMES H. MULFORD AND OTHERS NAMED AS PLAINTIFFS, AND J. A. IVES, ET AL., INTERVENERS, IN THE PETITION OF FILE IN THE ABOVE CAUSE, AND THEIR ATTORNEYS OF RECORD, A. J. LITTLE, J. L. BLACKWELL, AND C. A. AVRIETT:

Please take notice that the defendants will, on the 5th day of August, 1938 at 3:30 o'clock P. M. at the Courthouse of Lowndes County, Georgia, Valdosta, Georgia, file in the above named court their petition and bond, as required by law, for the removal of said cause from the above entitled court to the District Court of the United States for the Middle District of Georgia, Valdosta Division, and also a bond in the sum of Five Hundred Dollars (\$500.00), given on such removal according to law and the requirements of the statute in such cases made and provided, and copies of such bond and petition are herewith served.

(S) FRANKLIN & EBERHARDT,  
*Attorneys for Defendants.*

Due and legal service of the above and foregoing notice is hereby acknowledged. All other and further service or notice is hereby waived.

This the 5th day of August, 1938, at 12:20 o'clock P. M.

(S) A. J. LITTLE,  
 (S) C. A. AVRIETT,  
 (S) J. L. BLACKWELL,  
*Attorneys for the Plaintiffs and  
 Interveners in the above entitled cause.*  
 (S) LANGDALE, SMITH & TILLMAN,  
*Associate Attorneys for Interveners.*

On August 5, 1938, at 8 o'clock P. M., there was filed in the District Court of the United States for the Middle District of Georgia, Valdosta Division, a transcript of the record on removal.

On August 18, 1938, the United States of America filed its petition for leave to intervene as a party defendant, the same being as follows:

In the District Court of the United States, Middle District of Georgia, Valdosta Division

In Equity No. 97

JAMES H. MULFORD, ET AL., PLAINTIFFS

v.

NAT SMITH, DOING BUSINESS AS NAT SMITH WAREHOUSE AND ALSO AS NAT SMITH BRICK WAREHOUSE; B. B. SAUNDERS, DOING BUSINESS AS B. B. SAUNDERS WAREHOUSE NO. 1 AND ALSO AS B. B. SAUNDERS WAREHOUSE NO. 2; MURRELL HOLDERBY AND C. R. TOWNSEND, DOING BUSINESS AS SAVANNAH AVENUE WAREHOUSE; AND LEE MOORE, DOING BUSINESS AS ALLIANCE WAREHOUSE, DEFENDANTS

*Petition of United States of America for leave to intervene as a party defendant*

TO THE HONORABLE, THE JUDGE OF SAID COURT:

The petition of the United States of America by its attorneys, acting under the direction of the Attorney General of the United States, respectfully shows:

I.

The object of this petition is to effect the intervention in the above entitled case of the United States of America as a party defendant for the purpose of presenting evidence and argument upon the question of the constitutionality of certain provisions of the Agricultural Adjustment Act of 1938, approved February 16, 1938 (52 Stat. 31), as amended.

II.

The bill of complaint herein is filed by numerous persons, who describe themselves in the bill as producers of flue-cured tobacco, against several persons described in the said bill as warehousemen of such tobacco. The object of the bill of complaint is temporarily and permanently to enjoin the warehousemen from deducting from the purchase price of tobacco to be paid by them to such producers the penalty prescribed by Section 314 of the Act, applicable to the marketing of tobacco in excess of marketing quotas established for the farms of the producers under Title III, subtitle B, part I of the Act and related provisions, and from remitting, as provided by Section 372 of the Act, the said penalties to the Secretary of Agriculture.

## III.

The producers allege, as grounds for the relief sought by them in said bill, that the applicable provisions of the Act are violative of, and repugnant to, the Constitution of the United States. It is particularly alleged that such provisions of the Act constitute an invalid exercise of the commerce power of Congress under Article I, Section 8, Clause three, and invade the powers reserved to the states under the Tenth Amendment, and that by such provisions the producers are deprived of their liberty and property without due process of law in violation of the Fifth Amendment, of equal protection of the laws in violation of the Fourteenth Amendment, and of their right to a jury trial in violation of the Seventh Amendment. It is alleged also that the applicable provisions of the Act are unconstitutional and illegal as tending to the creation of a monopoly in the production and sale of tobacco by the citizens of certain states to the detriment of citizens of other states.

## IV.

The proceedings in this case were removed by the defendants herein to this court from the Superior Court of Lowndes County, State of Georgia. Prior to removal an order was issued by the Judge in said state court temporarily restraining and enjoining the defendants from deducting the equivalent of said penalties and from remitting the same to the Secretary of Agriculture, or any of his agents, or to any other person, except as provided in said order. It is also provided in said order that, until the further order of the court, each of the warehousemen named as defendants herein shall deduct from the purchase price to be paid by them to the producers for tobacco the equivalent of the penalty prescribed by the Act and pay the same to the Clerk of said state court, to be held by said Clerk as provided in said order.

## V.

The Clerk of this court, under date of August 9, 1938, acting pursuant to Section 1 of the Act of August 24, 1937, c. 754, 50 Stat. 751, 28 U. S. C. A. 401, certified to the Attorney General of the United States that the constitutionality of the Agricultural Adjustment Act of 1938, an Act affecting the public interest, was drawn in question in this court in these proceedings.

Wherefore it is prayed that an order may be passed permitting the United States of America to intervene and become a party defendant in this case for the purposes, and subject to the provisions, of Section 1 of the Act of August 24, 1937, mentioned above.

T. HOYT DAVIS,  
*United States Attorney.*

JOHN S. L. YOST,  
*Special Assistant to the Attorney General.*



On August 18, 1938, the District Court entered its order permitting the United States of America to intervene as a party defendant, the said order being as follows:

In the District Court of the United States, Middle District of Georgia,  
Valdosta Division

In Equity No. 97

**JAMES H. MULFORD, ET AL., PLAINTIFFS**

*v.*

**NAT SMITH, DOING BUSINESS AS NAT SMITH WAREHOUSE AND ALSO AS NAT SMITH BRICK WAREHOUSE; B. B. SAUNDERS, DOING BUSINESS AS B. B. SAUNDERS WAREHOUSE NO. 1 AND ALSO AS B. B. SAUNDERS WAREHOUSE NO. 2; MURRELL HOLDERBY AND C. R. TOWNSEND, DOING BUSINESS AS SAVANNAH AVENUE WAREHOUSE; AND LEE MOORE, DOING BUSINESS AS ALLIANCE WAREHOUSE, DEFENDANTS**

*Order of court permitting intervention of the United States of America as a party defendant*

It appearing to the satisfaction of the court from the petition for leave to intervene this day filed by and on behalf of the United States of America that good and sufficient cause exists therefor:

It is hereby ordered that the petition of the United States of America for leave to intervene and be made a party defendant in the above entitled cause be, and the same is hereby, approved and ordered filed, and leave so to intervene is hereby granted for the purposes, and subject to the provisions, of Section 1 of the Act of August 24, 1937, c. 754, 50 Stat. 751, 28 U. S. C. A. 401.

(S) **BASCOM S. DEAVER,**  
*District Judge.*

On August 26, 1938, the request of the Honorable Bascom S. Deaver, Judge of the United States District Court for the Middle District of Georgia, to the Honorable Rufus E. Foster, United States Senior Circuit Judge of the Fifth Circuit, for the designation of two other judges to participate in the hearing and determination of the case, together with the order of Honorable Rufus E. Foster designating the Honorable Samuel H. Sibley, United States Circuit Judge, and the Honorable Charles B. Kennamer, United States District Judge, were filed, said request and order thereon being as follows:

[Caption omitted in printing.]

To the Honorable **RUFUS E. FOSTER,** *United States Senior Circuit Judge, Fifth Circuit.*

The above styled case was filed in a Superior Court of the State of Georgia and removed to the United States District Court, Middle District of Georgia, Valdosta Division. A restraining order was granted by the Superior Court before removal.

The bill makes an attack upon the constitutionality of the Agricultural Adjustment Act of 1938 relating to penalties on tobacco sales in excess of the marketing quota. The Attorney General of the United States was notified and the United States of America has intervened in the case under Section 401, Title 28 U. S. C. A.

As required by Section 380a, Title 28 U. S. C. A., I respectfully request that you designate two other judges to participate in the hearing and determination of said case.

BASCOM S. DEAVER,  
*United States District Judge,  
Middle District of Georgia.*

*Order*

In compliance with the request of the Honorable Bascom S. Deaver, the Honorable Samuel H. Sibley, U. S. Circuit Judge, and the Honorable Charles B. Kennamer, U. S. District Judge, are hereby designated to sit with him in the trial and consideration of the above numbered and entitled case.

RUFUS E. FOSTER,  
*Senior U. S. Circuit Judge.*

On August 26, 1938, plaintiffs filed their petition praying that the restraining order entered July 27, 1938, by the Superior Court of Lowndes County, Georgia, be continued in force and effect, with modifications, said petition being as follows:

[Caption omitted in printing.]

To Honorable BASCOM S. DEAVER, JUDGE OF SAID COURT:

The petition of James H. Mulford et al., plaintiffs in said cause, and J. A. Ives et al., interveners therein, respectfully shows to the court:

1.

That subsequent to the signing of the order by the Judge of the Superior Court of Lowndes County, Georgia, restraining the defendants from remitting the equivalent of penalties on the sale of "excess" tobacco, as described in the original petition, and prior to the date assigned for a hearing in the Superior Court of Lowndes County, Georgia, said cause was, on petition of defendants, removed to this court and that since said time there has been no change in the provisions of said order dated July 27th, 1938.

2.

That subsequent to the signing of said order, the representatives of the Secretary of Agriculture instituted a readjustment of a large number of said quotas and have already readjusted a large number of same, and are still readjusting some of said quotas in Lowndes County and adjoining counties, and have authorized and directed the defendants to withhold their report on same until several days subsequent to the closing of said market.

## 3.

That, because of said readjustments and instructions, the defendant warehousemen have as yet scarcely completed their calculations of the amounts of said penalties, and therefore have been unable to pay the equivalent of same either to the Secretary of Agriculture, as provided in the said Act of Congress, or to the Clerk of the Superior Court of Lowndes County, Georgia, as provided in said order of Court.

## 4.

That upon granting said temporary restraining order, the Judge of the Superior Court of Lowndes County, Georgia, did not require bond and security to be given by plaintiffs and that under the law of the State of Georgia it was within the discretion of said court to require such bond and security.

## 5.

Practically all of plaintiffs and interveners are small farmers and individually unable to give such bond and security separately, and that it is a very difficult matter for counsel for petitioners to see a large number of them and arrange for said bond and security as they are scattered over five or six different counties over South Georgia and North Florida.

## 6.

That, if said restraining order should be dissolved at this time, because of the fact that no bond or security by plaintiffs has been given or required as aforesaid, the payment of the equivalent of the penalties involved in this suit would, if said restraining order be dissolved, doubtless be demanded by the Secretary of Agriculture, and, if such demand should be complied with, the defendants would be individually liable to plaintiffs in the respective amounts thereof should the Act of Congress be finally declared to be unconstitutional, thereby resulting in a multitude of suits instituted and prosecuted at great expense by plaintiffs and resulting also in great loss to defendants which they claim that they as innocent parties in the matter should not suffer.

## 7.

That since the institution of this suit defendants in said cause have stated that, because of the threat of many separate suits against them in the event said Act should be declared unconstitutional, it is the intention of each of said defendants unless ordered to do so by a court of competent jurisdiction, to refuse to pay the equivalent of said penalties to either the Secretary of Agriculture or to said petitioners, and that it is their intention to retain posses-

sion of same until the constitutionality of said Act of Congress is finally determined.

8.

Plaintiffs further show that the equivalent of said penalties should not be permitted to remain in the possession and control of said defendants as it is clear that either the plaintiffs or the Government are entitled to same and that therefore the rights of the plaintiffs and of the Government in said matter will be best protected by requiring that the equivalent of said penalties be impounded in the registry of this court and there kept subject to the order of this Court pending the final determination of this cause.

9.

That, Attorneys for plaintiffs, defendants, and the United States of America have agreed that the above stated facts are true and that, therefore, the provisions of the said restraining order passed by the Judge of the Superior Court of Lowndes County, Georgia, on July 27th, 1938, temporarily restraining defendants from remitting to the Secretary of Agriculture or his agents the equivalent of said penalties remain in force pending the further order of this court, and that the equivalent of said penalties be impounded into the registry of this court for the protection of all parties concerned, as only by the impounding of same can the plaintiffs or the Government be protected against the danger of irreparable loss.

10.

Petitioners further show that the defendants, including the United States of America as interveners, have by their counsel agreed that the said restraining order be continued in force and effect, and have agreed that the deposit of the equivalent of said penalties into the registry of this court, under such terms and conditions as the court may provide, and the said funds so deposited shall serve as security for the payment of such costs and damages as may be incurred or suffered by any party who may be found to have been wrongfully enjoined or restrained thereby, in full compliance with the provisions of Title 28, U. S. C., Section 382.

Wherefore plaintiffs pray that the court pass an order in said cause providing in substance as follows:

(1) That the temporary restraining order above referred to be continued in force and effect pending the further order of this court.

(2) That defendants be required to pay the equivalent of said penalties into the registry of this court under such terms and conditions as the court may deem proper for the protection of all parties interested therein.

(3) That under the peculiar facts and circumstances above outlined and by agreement of all parties, the deposit of said money

into the registry of the court and the funds so deposited be accepted as full compliance with the provisions of Title 28, U. S. C., Section 382.

(S) A. J. LITTLE,  
 (S) C. A. AVRIETT,  
 (S) J. L. BLACKWELL,  
*Attorneys for Plaintiffs.*

A. J. LITTLE,  
*Post Office Address, Valdosta, Ga.*  
 C. A. AVRIETT,  
*Post Office Address, Jasper, Fla.*  
 J. L. BLACKWELL,  
*Post Office Address, Live Oak, Fla.*

We agree that the statements of fact outlined in the above petition are true, and agree to the issuance of an order prayed by plaintiffs therein.

This 26th day of August, 1938.

(S) FRANKLIN & EBERHARDT,  
*Attorney for Warehousemen.*  
 (S) T. HOYT DAVIS,  
 (S) JOHN S. L. YOST,  
*Attorneys for the United States of America.*

On August 26, 1938, the Court entered its order continuing the restraining order issued by the Superior Court of Lowndes County, Georgia, on July 27, 1938, in effect, as modified, said order being as follows:

[Caption omitted in printing.]

*Order*

The foregoing petition of Plaintiffs and Intervening Plaintiffs in the above entitled cause, consented to by all parties as therein shown, having been read and considered by the court, and counsel for all parties having been heard, and it appearing to the court:

1.

That subsequent to the signing of the order by the Judge of the Superior Court of Lowndes County, Georgia, restraining the defendants from remitting the equivalent of penalties on the sale of "excess" tobacco as described in the original petition, and prior to the date assigned for a hearing in the Superior Court of Lowndes County, Georgia, said cause was, on petition of defendants, removed to this court and that since said time there has been no change in the provisions of said order dated July 27th, 1938.

2.

That none of the penalties referred to in said petition have as yet been paid into the registry of the Superior Court of Lowndes County, Georgia, as provided for in the order of the Judge of said Court.

3.

That practically all of plaintiffs and interveners are small farmers and individually unable to give such bond and security separately, and that it is a very difficult matter for counsel for petitioners to see a large number of them and arrange for said bond and security as they are scattered over five or six different counties over South Georgia and North Florida.

4.

That, if said restraining order should be dissolved at this time, because of the fact that no bond or security by plaintiffs has been given or required as aforesaid, the payment of the equivalent of the penalties involved in this suit would, if said restraining order be dissolved, doubtless be demanded by the Secretary of Agriculture, and, if such demand should be complied with, the defendants would be individually liable to plaintiffs in the respective amounts thereof should the Act of Congress be finally declared to be unconstitutional, thereby resulting in a multitude of suits instituted and prosecuted at great expense by plaintiffs and resulting also in great loss to defendants which they claim that they as innocent parties in the matter should not suffer.

5.

That since the institution of this suit defendants in said cause have stated that, because of the threat of many separate suits against them in the event said Act should be declared unconstitutional, it is the intention of each of said defendants unless ordered to do so by a court of competent jurisdiction, to refuse to pay the equivalent of said penalties to either the Secretary of Agriculture or to said petitioners, and that it is their intention to retain possession of same until the constitutionality of said Act of Congress is finally determined.

6.

That the equivalent of said penalties should not be permitted to remain in the possession and control of said defendants as it is clear that either the plaintiffs or the Government are entitled to same, and that therefore the rights of the plaintiffs and of the Government in said matter will be best protected by requiring that the equivalent of said penalties be impounded in the registry of this court and there kept subject to the order of this court pending the final determination of this cause.

7.

That the equivalent of said penalties should be impounded into the registry of this court for the protection of all parties concerned, and that only by the impounding of same can the plaintiffs and the Gov-

ernment be protected against the danger of irreparable and imminent loss.

It is, thereupon, ordered and adjudged as follows:

(1) That the temporary restraining order issued by the Superior Court of Lowndes county, Georgia, on the 27th day of July, 1938, as hereinafter modified, be and it is hereby continued in force and effect pending the further order of this court.

(2) That instead of paying the equivalent of the penalties referred to therein to the Clerk of the Superior Court of Lowndes County, Georgia, as required by the provisions of said order of the said Superior Court of Lowndes County, the defendants are required to pay the equivalent of said penalties to George F. White, Clerk, Macon, Georgia, for deposit in the registry of this court.

(3) That said payments of said warehousemen shall be each accompanied by a written report to be filed simultaneously with such payments with said Clerk showing the name and address of each grower and the amount of the penalty assessed against the "excess" tobacco sold by him in each of said defendants' warehouses, respectively; and that each of said payments and reports shall be made not later than noon, September 2, 1938.

(4) That the funds deposited as aforesaid, with Clerk of this Court, be and the same shall constitute security for the payment of such costs and damages as may be incurred or suffered by any party who may be found to have been wrongfully enjoined or restrained hereby, in compliance with the provisions of Title 28, U. S. C., Section 382.

Done at Macon, Georgia, this 26th day of August 1938.

(S.) BASCOM S. DEEVER,  
*United States Judge.*

On August 29, 1938, the plaintiffs and intervening plaintiffs, with leave of Court, filed their amendment to the bill of complaint, said amendment being as follows:

[Caption omitted in printing.]

*Amendment to bill of complaint*

Now come plaintiffs and intervening plaintiffs in the above entitled cause, and leave of Court being first had and obtained amend their Bill of Complaint heretofore filed as follows:

1.

Sub-paragraph (e) of Paragraph Seventeen of said Bill of Complaint is stricken.

Plaintiffs and intervening plaintiffs further amend said bill by adding thereto additional paragraphs, as follows:

## 2.

Petitioners further allege that the production and sale of tobacco by tobacco growers of this country have not burdened or obstructed commerce or the free flow of commerce, and that there is no reason to conclude that it will so do; that the facilities of the railroads and other common carriers of the country and particularly those carriers operating in the tobacco-growing sections of the Southeast, where the bulk of flue-cured tobacco is produced, have for many years past, were at the time of the passage and approval of said Act, and now are more than ample to move said tobacco freely and without undue delay. Petitioners further show that neither in the farming industry of the sections named, nor in the operation of tobacco warehouses have there been any labor disputes or any danger or hint of labor disputes to threaten the free flow of tobacco in Interstate or Foreign Commerce. That there has been no disorderly marketing of tobacco. The production and sale of tobacco by the growers, therefore, have not directly affected Interstate or Foreign Commerce and there exists no condition indicating that it will directly affect same to the extent that its regulation by Congress is within the powers delegated to Congress by the Constitution of the United States.

## 3.

Petitioners further show that Section 313 (b) which is as follows: "The Secretary shall provide, through the local committees, for the allotment of the marketing quota for any State among the farms on which tobacco is produced, on the basis of the following: Past marketing of tobacco, making due allowance for drought, flood, hail, other abnormal weather conditions, plant bed, and other diseases; land, labor, and equipment available for the production of tobacco; crop-rotation practices; and the soil and other physical factors affecting the production of tobacco; Provided, That, except for farms on which for the first time in five years tobacco is produced to be marketed in the marketing year for which the quota is effective, the marketing quota for any farm shall not be less than the smaller of either (1) three thousand two hundred pounds, in the case of flue-cured tobacco, and two thousand four hundred pounds, in the case of other kinds of tobacco, or (2) the average tobacco production for the farm during the preceding three years, plus the average normal production of any tobacco acreage diverted under agricultural adjustment and conservation programs during such preceding three years," provides no basis or standard which is reasonable or capable of being understood, by which the Secretary or his local committees may be intelligently guided in allotting said quotas, and furnishes to the grower no information or standard by which he may determine with the slightest degree of accuracy the number of



pounds of tobacco that he may raise on any farm free of penalty, for that neither in said paragraph nor elsewhere in said Act is there any definition or indication of the meaning of the words "past marketing," nor is there therein any definition or indication showing that said words cover the marketing of tobacco in any one or more named years; nor does said paragraph or Act define the meaning of the words "due allowance" which is directed to be made for the happening of any of the other contingencies or the existence of the other factors mentioned in said Section, nor does said Act indicate what "other physical factors affecting the production of tobacco" are to be taken into consideration, nor is there stated therein the relative effect of said factors or the happening of any of said contingencies. Because of the absence of such definite and intelligible standards by which said quotas are directed to be allotted, and because of the omission from said Act of any definite channelizing of the administrative duties of the Secretary of Agriculture acting through his local committees in allotting said quotas, the determination of the basis for the allotment of same is left almost wholly to the insufficiently guided and arbitrary interpretation of the meaning of said Section by the Secretary acting through his committees, and the final determination of said quotas by the Secretary is therefore left almost entirely to his discretion or to the judgment or whims of said committees acting for the said Secretary; and, therefore, by the terms of said Section, Congress has delegated to the Secretary of Agriculture, acting through his committees, legislative powers to fix the standards by which quotas are allotted and judicial powers to arbitrarily determine the allotment of said quotas, involving the power to pass on substantial property rights of petitioner, who are furnished no definite guide by which they may exercise their rights in the premises or upon which they may base an appeal to a reviewing committee or court. Petitioners further allege that upon appeal to a reviewing committee or court said committee or court will be confronted with the same insuperable difficulties in passing upon said appeal as are hereinbefore outlined. The duties therein delegated to said Secretary are consequently not merely administrative, but also legislative and judicial. Petitioners, therefore, allege that said Section of said Act outlining the basis and method of the allotment of said quotas, and the consequent assessment of the penalty on the sale of said "excess" tobacco is violative of the provisions of the Constitution of the United States in the following additional particulars:

(a) They are violative of Article 1 Section 1 of the Constitution of the United States which vests all legislative powers therein granted in a Congress of the United States, in that, legislative powers to arbitrarily interpret, expand, and apply said indefinite, vague and unintelligible provisions of said Section are delegated to the Secretary of Agriculture acting through his local committees in the manner outlined in the preceding portion of this paragraph.

(b) They are violative of Article 3 Section 1 of the Constitution of the United States which provides that the judicial powers of the United States shall be vested in one Supreme Court and in such inferior Courts as the Congress may from time to time ordain and establish, in that judicial powers to pass upon and determine issues involving substantial property rights of citizens are vested in the Secretary of Agriculture, acting through committees, as hereinbefore outlined in the preceding portion of this paragraph.

(c) They are violative of the provisions of the fifth amendment of the Constitution of the United States which provides that no person shall be deprived of life, liberty, or property without due process of law, in that, by the said provisions of said Act excessive penalties are imposed upon citizens of the United States, including petitioners because of the fact, that, as a result of engaging in a lawful occupation, they may produce and offer for sale more tobacco than the said Secretary may authorize them to produce free of penalty, without petitioners having been furnished by the provisions of said Act with any definite or certain basis or standard by which they could intelligently conduct the planting or cultivation of their tobacco crops within limits that might subsequently be fixed by said Secretary as necessary to avoid the assessment of said penalties, and for the further reason that, under the terms of said Act said substantial and excessive penalties are assessed without petitioners having been afforded any opportunity to be heard in any court of law or equity respecting the legality or constitutionality of same.

## 4.

Petitioners allege that they are citizens and residents respectively of Lowndes County, Georgia, or of adjoining counties of South Georgia and North Florida, all in the vicinity of Valdosta, Georgia, the location of the warehouses operated by defendants, and that each of them respectively has produced tobacco on farms located in the county of his residence or in an adjoining county and that they haul their tobacco to said warehouses for the purpose of sale, either on trucks, wagons, or other similar private conveyances.

## 5.

The petitioners allege that for the farm of each of the petitioners a marketing quota for flue-cured tobacco was established, in accordance with the applicable provisions of the Agricultural Adjustment Act of 1938, approved February 16, 1938, as amended; that such quota was intended to be made effective for the marketing year beginning July 1, 1938, and ending June 30, 1939; that each of the quotas thus established was for an amount less than the amount of such tobacco produced on the farm in 1938; that the marketing season for such tobacco in Georgia and Florida begins on or about the first day of August and ends on or about the first day of September;

that each of the petitioners, while not complaining herein of the amount, as such, of the quota for the marketing of his tobacco as established for his farm, does complain of the establishment of such a quota at a time subsequent to the completion by him, at great expense, of all arrangements for the seeding, planting, and cultivation of his flue-cured tobacco crop.

Petitioners further allege that, in accordance with the custom of tobacco growers in South Georgia and North Florida they began to arrange for the planting of their 1938 tobacco crop in December 1937, at or about which time it was necessary, in following the best methods of producing tobacco, for them to prepare with great care, trouble, and expense, their tobacco beds in which the seeds are planted. That it was necessary to cultivate said beds carefully, sow the seed therein, water same whenever needed, cover same with cloth in order that the plants may be protected from the cold, and otherwise to take care of the plants therein until they could reach the size requisite for replanting, and that, upon reaching said size, it was necessary that they be replanted in the fields prepared and fertilized for that purpose. That it was necessary to fertilize said fields with a large amount of expensive fertilizer, cultivate them carefully, spray the plants diligently to insure any reasonable degree of success in producing a fair crop of tobacco on same. That it was necessary to begin to gather said crop of tobacco during the month of June 1938, and to continue during said month of July to gather, cure, and grade same, all of which requires much labor, care, and expense, and that the greater bulk of said crop in South Georgia and North Florida is usually gathered and ready for market by the first of August each year, and this condition was true during the year 1938.

Petitioners allege that at the time of the approval by the President of the Agricultural Adjustment Act of 1938, they and each of them had planted out their beds and were either about ready to reset said plants or had already reset a large portion of same in their respective fields, and that at the time of the proclamation of the Secretary of Agriculture during February 1938, of the amount of the National marketing quota for flue-cured tobacco, almost all of their said tobacco fields had been planted, and that, during said periods above referred to, petitioners had no knowledge or any way of learning even the probable amount of the quota that under the terms of said Act might be allotted to each of said farms respectively. Petitioners further allege that, at the time of the announcement of the State quotas, during July, 1938, and of the announcement of the individual quotas for their respective farms, immediately prior to the opening of the auction markets, each had largely, if not wholly, completed planting, cultivating, gathering, curing and grading his said crop, and that until the announcement of said individual quotas petitioners did not know and had no way of knowing the probable amount of same, except that, at the time of the preparation of the original bill of complaint in this cause,

petitioners had reached the conclusion, based on available information indicating a large yield in Georgia and Florida, that each of them would probably produce tobacco in excess of the allotted quota. Petitioners, therefore, allege that, under the provisions of said Act, penalties have been or will be assessed against each of them for the commission of lawful acts, when petitioners had no means of estimating the quota that might be allotted to each, or of knowing in advance of the tobacco producing season, how much if any tobacco in excess of said quota each might produce, and that, even if said Act could be otherwise considered as constitutional it was, for the reasons stated above, passed and approved on a date too late to be constitutionally applied to the 1938 tobacco crops of petitioners.

Petitioners admit that in fixing their respective quotas for the 1938 season, the Secretary of Agriculture adhered to and complied with the provisions of the said Act, herein contended to be invalid and uncertain in its terms, but they allege that the said provisions of said Act, in so far as they apply to the tobacco crop of petitioners for the year 1938, are, in addition to the constitutional objections herein before raised to same, violative of the provisions of the Constitution of the United States, in that petitioners, in the manner and under the conditions above outlined, will be deprived of their property without due process of law, in violation of the provisions of the Fifth Amendment to the Constitution of the United States.

Wherefore, waiving discovery, plaintiffs add to their petition the following prayers:

(a) That the provisions of said Act quoted in "Exhibit B" to said original complaint be declared unconstitutional, null and void.

(b) That the provisions of said Act included in said Exhibit, in so far as they apply to the marketing of petitioners' tobacco during the year 1938, be declared unconstitutional, null and void, and that the penalties imposed as a result thereof be declared null and void.

(c) That this amendment be allowed and ordered filed as part of the record in said cause.

(S) A. J. LITTLE,  
 (S) C. A. AVRIETT,  
 (S) J. L. BLACKWELL,

A. J. LITTLE,  
*Post Office Address, Valdosta, Ga.*  
 C. A. AVRIETT,  
*Post Office Address, Jasper, Florida.*  
 J. L. BLACKWELL,  
*Post Office Address, Live Oak, Florida.*

On September 2, 1938, the answer of the United States of America, intervening defendant, to the bill of complaint and the amendment thereto was filed, said answer being as follows:

[Caption omitted in printing.]

*Answer of United States of America, intervening defendant*

TO THE HONORABLE SAMUEL H. SIBLEY, CHARLES B. KENNAMER, BASCOM S. DEEVER:

The answer of the United States of America, intervening defendant, to the bill of complaint and the amendment thereto, heretofore filed in this case, respectfully shows:

I.

The said defendant admits the allegations contained in paragraphs 1, 2, 3, 4, 5, 6, and 7 of the bill of complaint.

II.

The said defendant admits the allegations contained in paragraph 8 of the bill of complaint except the allegation that the Agricultural Adjustment Act of 1938 contains provisions regulating the production of tobacco, which allegation is denied.

III.

Answering paragraphs 9 and 10 of the bill of complaint, the said defendant admits that the facts alleged therein are true in substance.

IV.

Answering paragraph 11 of the bill of complaint, the said defendant denies that all, but admits that some, of the plaintiffs have produced tobacco in excess of their respective farm quotas established under the provisions of the said Act. The defendant admits that any warehouseman through whom any of the plaintiffs may market tobacco in excess of any quota established for the farm of such plaintiff is subject to the penalty mentioned in said paragraph of the bill, and that such warehouseman has the right to deduct an amount equivalent to the penalty in paying the purchase price of tobacco to such grower. The defendant denies, however, that such deduction by the warehouseman will cause any of such plaintiffs to receive for his tobacco a price far below the average cost of production. The defendant also denies that the penalty provisions of the Act will result in coercing tobacco farmers, including any of the plaintiffs herein, to reduce their future tobacco acreage.

V.

Answering paragraph 12 of the bill of complaint, the said defendant admits that, according to the information received by the said defendant, the warehousemen who are defendants herein intend, in paying the purchase price to such of the plaintiffs as market tobacco through such warehousemen in excess of the quota estab-

lished under the Act, to deduct an amount equivalent to the penalty prescribed by the Act. The defendant denies that the penalty prescribed by the Act is imposed upon the plaintiffs, or any one of them, for producing on their farms tobacco in any amount and, further, denies that the Secretary of Agriculture has any power under said Act, or has attempted to exercise any power by virtue of said Act, to limit or authorize the production of tobacco on the farms of such plaintiffs.

#### VI.

The said defendant denies the allegations contained in paragraph 13 of the bill of complaint.

#### VII.

The said defendant is without knowledge as to the matters contained in paragraphs 14 and 15 of the bill of complaint.

#### VIII.

The said defendant, although not required to answer the conclusions of law set forth in paragraphs 16 and 17 of the bill of complaint, denies that the applicable provisions of the Act are intended to regulate the production of tobacco or the business of farming, and avers that such provisions regulate the marketing only of abnormally excessive supplies of tobacco, as in and directly affecting interstate and foreign commerce, and are entirely consistent with the Constitution of the United States.

#### IX.

Answering the additional paragraph to the bill of complaint mentioned in paragraph 2 of the amendment to the bill of complaint, the said defendant denies the allegations therein contained except the allegation that the facilities of the railroads and other common carriers of the country, and particularly those carriers operating in the tobacco growing sections of the Southeast, where the bulk of flue-cured tobacco is produced, have been for many years past, were at the time of the passage and approval of said Act, and now are more than ample to move said tobacco freely and without any undue delay, and also the allegation that neither in the farming industry of the sections named nor in the operation of tobacco warehouses have there been any labor disputes, or any danger or any hint of labor disputes, threatening the free flow of tobacco in interstate and foreign commerce, which said allegations the said defendant admits, but in connection therewith avers that during the marketing season for flue-cured tobacco in 1933 there arose grower protests with respect to the auction market prices for such tobacco, which were at a ruinously low level. These protests arose first in Georgia and then spread to South Carolina and North

Carolina. Appeals were made to the Agricultural Adjustment Administration. Mass meetings of growers were held throughout the flue-cured tobacco belt, and, pending some action by the Federal Government, the markets in South Carolina and North Carolina were closed by official action of the respective Governors of these two states. The marketing in Georgia had been completed, and selling in Virginia had not yet commenced, so that the flue-cured tobacco industry was at a complete standstill. Conferences were held among the growers, the buyers and officials of the Agricultural Adjustment Administration in Washington, D. C. There was an insistent demand that immediate action be taken by the Federal Government to save the remainder of the 1933 crop from being sacrificed at the prices prevailing at the time of the closing of the markets. As a result, a marketing agreement was entered into between the principal buyers of flue-cured tobacco and the Secretary of Agriculture, pursuant to the provisions of Section 8 (2) of the Agricultural Adjustment Act of 1933, and this agreement had a salutary effect upon the prices subsequently received by the growers for the remainder of the 1933 crop of flue-cured tobacco.

## X

Answering the additional paragraph to the bill of complaint mentioned in paragraph 3 of the amendment to the bill of complaint, the said defendant denies the conclusions of law therein contained.

## XI.

Answering the additional paragraph to the bill of complaint mentioned in paragraph 4 of the amendment to the bill of complaint, the said defendant admits the allegations therein contained.

## XII.

Answering the additional paragraph to the bill of complaint mentioned in paragraph 5 of the amendment to the bill of complaint, the said defendant admits the facts therein alleged, but denies the conclusions, legal and otherwise, therein contained.

And, having fully answered said bill of complaint and the amendment thereto, the United States of America, intervening defendant, prays that the bill of complaint herein, as amended, be dismissed.

(S) T. HOYT DAVIS,  
*United States Attorney.*

(S) JOHN S. L. YOST,  
*Special Assistant to the Attorney General.*

On September 3, 1938, the answer of defendants to the bill of complaint and amendment thereto was filed, said answer being as follows:  
[Caption omitted in printing.]

*Plea and answer of the defendants*

Now come Nat Smith, doing business as Nat Smith's Warehouse, and also as Nat Smith's Brick Warehouse, B. B. Saunders, doing business as B. B. Saunders Warehouse No. 1, and also as B. B. Saunders Warehouse No. 2, Murrel Holderby and C. R. Townsend, doing business as Savannah Avenue Tobacco Warehouse, and Lee Moore, doing business as Alliance Warehouse, named as defendants in the petition of the plaintiffs and intervenor in the above cause, and for plea and answer allege:

1.

These defendants admit the allegations contained in paragraph 1 of plaintiff's original petition.

2.

These defendants admit the allegations contained in paragraph 2 of plaintiff's original petition.

3.

These defendants admit the allegations contained in paragraph 3 of plaintiff's original petition.

4.

These defendants admit the allegations contained in paragraph 4 of plaintiff's original petition.

5.

These defendants admit the allegations contained in paragraph 5 of plaintiff's original petition.

6.

These defendants admit the allegations contained in paragraph 6 of plaintiff's original petition.

7.

These defendants admit the allegations contained in paragraph 7 of plaintiff's original petition.

8.

These defendants admit the allegations contained in paragraph 8 of plaintiff's original petition.

9.

These defendants admit the allegations contained in paragraph 9 of plaintiff's original petition.



10.

In answer to paragraph 10 of the original petition of plaintiffs, these defendants admit that, at the time of the preparation of said bill, none of the plaintiffs had been notified of the exact quota allotted, or to be allotted to each of them or to the farms cultivated by each of them during the year 1938. From information now in hand, defendants allege that a large number of said plaintiffs have raised and produced an amount of tobacco in excess of said quota. Filed records kept by these defendants will disclose the amount of said excess of tobacco sold in the tobacco warehouses of these defendants.

11.

Answering paragraph 11 of said petition, these defendants admit the allegations therein contained in so far as they apply to each petitioner who is subject to be penalized under the provisions of the Act therein referred to.

12.

Answering paragraph 12 of said petition, these defendants admit that at the time of the filing of said bill it was the intention of each of these defendants to deduct the amount equivalent to said penalty in accordance with the provisions of said Act and to forward same to the Secretary of Agriculture, and to pay to such petitioners as had produced the so-called "excess tobacco" the balance after deducting commissions and costs of sale. These defendants now allege that, because of filing of said suit and threats of future suits, they are placed in a position where for the protection of their own interests they do not now know what course to take in the premises with respect to the deduction and disposition of the equivalent of said penalties. These defendants admit that they have no intention of paying the equivalent of said penalties out of their own funds and admit that the deduction of same from the price paid producers in accordance with the provisions of said Act will result in the payment of the penalty by the producer.

13.

Answering paragraph 13 of said petition, these defendants allege that the allegations therein contained are largely conclusions of law, and these defendants are unable to state with certainty whether or not the production and sale of tobacco by a farmer constitutes solely the business of farming, and are unable to state whether or not said production and sale directly affects interstate commerce.

14.

Answering paragraph 14 of said petition, these defendants allege that they are not at this time in position to state the amount of

pounds raised by each of petitioners in excess of their quota nor to state what will be the average market value of said excess, but allege that the average market value of same will be approximately — cents per pound.

## 15.

Answering paragraph 15 of said petition, these defendants allege that it was their original intention to deduct the equivalent of said penalty from the price paid for the tobacco of each producer and to remit same to the Secretary of Agriculture. By reason of a restraining order entered in this cause on August 26, 1938, these defendants, unless otherwise directed by the Court, intend to pay into the registry of this Court an amount of money equivalent to said penalties which had been deducted by these defendants from the proceeds of the sales of excess tobacco sold on the floors of their respective warehouses. These defendants admit that, had they not been restrained by said order of this Court, they would have forwarded the equivalent of said penalties, so collected by them, to the Secretary of Agriculture; and, if that had been done by these defendants and should the plaintiffs have subsequently recovered judgment against these defendants in the amount of said penalties, collected by each of these defendants, these defendants would probably have been financially unable to pay the entire amount of said judgments and would have probably been reduced to insolvency.

## 16.

In answer to paragraph 16 of the original petition of plaintiffs, these defendants are unable either to admit or to deny the allegations contained in this paragraph of said petition because such allegations are mere conclusions of the pleader.

## 17.

In answer to paragraph 17 of the original petition of plaintiffs, these defendants are unable either to admit or to deny the allegations contained in this paragraph of said petition because such allegations are mere conclusions of the pleader.

## 18.

In answer to paragraph 2 of the amendment to the original petition of plaintiffs, these defendants admit all the allegations of this paragraph of said amendment except that which is contained in the last sentence thereof. These defendants are unable to admit or deny the allegations contained in the last sentence of this paragraph for the reason that the same are mere conclusions of fact and of law.

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19.

In answer to paragraph 3 of said amendment these defendants admit that there is correctly set forth in this paragraph Section 314 (b) of what is known as the Agriculture Administration Act of 1938; but these defendants are unable to admit or deny the remainder of the allegations contained in this paragraph of said amendment because such allegations are mere conclusions of fact and of law.

20.

In answer to paragraph 4 of said amendment, these defendants admit the allegations therein contained.

21.

In answer to paragraph 5 of said amendment, these defendants admit the allegations of fact therein contained; but, these defendants are unable to admit or deny that said Act was passed and approved too late to be constitutionally applied to the 1938 tobacco crops of plaintiffs, and the provision of said Act, insofar as they apply to the tobacco crops of plaintiffs for the year of 1938 are violative of the provisions of the Constitution of the United States in that plaintiffs, in the manner and under the conditions alleged in this paragraph will be deprivation of their property without due process of law in violation of the provisions of the 5th Amendment to the Constitution of the United States, because such allegations are mere conclusions of law on the part of the pleader.

22.

For further answer to plaintiffs petition as amended, these defendants show that under the circumstances and conditions disclosed by the admitted allegations contained in plaintiff's petition, these defendants now occupy a position analogous to that of an innocent and involuntary stakeholder holding the funds claimed by the petitioners and by the Secretary of Agriculture. They now come into Court and ask for the protection of this Court and for an order directing the disposition of such funds in such manner as will protect these defendants from the adverse claims of all parties to this case or that may hereafter be made parties thereto.

23.

These defendants further show that because of the facts above outlined, they should be relieved from the payment of court costs in this case regardless of the final outcome of same.

These defendants further allege that it is, therefore, their only duty to give to the Court such assistance as they may be called upon to give in order to arrive at the facts in said cause and to assist the Court, in any way called upon, to reach a correct determination of the issues involved.

Wherefore, these defendants, having fully answered, pray:

(1) that, in any event, these defendants be relieved of any costs that may be incurred in this cause.

(2) that the Court shall pass such protective orders, judgments, and decrees as may protect these defendants from any loss by reason of the imposition of said penalties.

(3) that these defendants be decreed by the Court to be in a position analogous to a stakeholder of the funds collected by them as penalties as aforesaid and paid or to be paid into the registry of this Court.

(4) that these defendants shall have such other and further relief in the premises as to the Court may seem meet and proper.

(Signed) FRANKLIN & EBERHARDT,  
*Attorneys for the Defendants, Nat Smith, et al.*



**In the District Court of the United States for the  
Middle District of Georgia, Valdosta Division**

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**In Equity No. 97**

**JAMES H. MULFORD ET AL., PLAINTIFFS**

*v.*

**NAT SMITH ET AL., ORIGINAL DEFENDANTS**

and

**UNITED STATES OF AMERICA, INTERVENING DEFENDANT**

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**STIPULATION OF FACTS AND EVIDENCE**

It is hereby stipulated by and between the parties to the above-entitled cause, by their solicitors of record, that the said cause shall be heard for final decree and decided upon the issues hereinafter set forth arising under the pleadings herein and that, in order to expedite the hearing of said issues, the matters and facts contained in this stipulation may be taken by the court as true and as constituting all of the evidence and facts upon which, in addition to those matters and facts of which the court takes judicial notice, a decision may be rendered and a final decree entered herein: *Provided, however,* That each of the parties hereto expressly reserves the right to contend that any fact or evidence recited in this stipulation is not material or relevant to the issues herein and expressly reserves also the complete and full right to appellate review, as provided by law, of any decree which may be entered in this cause upon this stipulation. The exhibits hereinafter referred to are attached hereto and are hereby made a part hereof.

The following matters and facts are hereby stipulated and agreed upon:

**I**

**The National Marketing Quota**

The Secretary of Agriculture (hereinafter referred to as the "Secretary"), acting pursuant to and in accordance with the provisions of subsections (a) and (d) of section 312 of the Agricultural Adjust-

ment Act of 1938 (hereinafter referred to as the "act"), on February 18, 1938, found, from the latest available statistics of the Federal Government, that the "total supply" of flue-cured tobacco for the marketing year for such tobacco beginning July 1, 1937, exceeded the "reserve supply level" for such year and proclaimed the amount of such total supply to be 1,733,000,000 pounds, and the amount of such "reserve supply level" to be 1,681,000,000 pounds (Exhibit No. 1). Acting in like manner, the Secretary also determined and specified in such proclamation the amount of the national marketing quota in terms of the total quantity of such tobacco which may be marketed, which would make available during the marketing year for such tobacco beginning July 1, 1938, and ending June 30, 1939, a supply of such tobacco equal to the "reserve supply level." The amount of the national marketing quota so determined and specified by the Secretary was 705,000,000 pounds.

The "total supply" of flue-cured tobacco for the marketing year for such tobacco beginning July 1, 1937, consisted of the "carry-over," as defined by the act, of such tobacco on July 1, 1937, which amounted to 883,000,000 pounds and of the "estimated production" of such tobacco in the United States during the calendar year 1937 amounting to 850,000,000 pounds, making a "total supply" of 1,733,000,000 pounds.

The "reserve supply level," as given above, consists of the "normal supply," as defined by the act, amounting in this case to 1,601,000,000 pounds, and five percent thereof, amounting in all to 1,681,000,000 pounds as above. The applicable "normal year's domestic consumption and exports" amounted to 730,000,000 pounds, consisting of the domestic consumption figure of 360,000,000 pounds and the export figure of 370,000,000 pounds. The consumption figure of 360,000,000 pounds, plus 175 percent thereof amounted to 630,000,000 pounds, and the export figure of 370,000,000 pounds, plus 65 percent thereof amounting to 241,000,000 pounds, together constituted the total "normal supply" of 1,601,000,000 pounds as stated above.

The national marketing quota of 705,000,000 pounds is the result of deducting from the reserve supply level of 1,681,000,000 pounds the estimated carry-over as of July 1, 1938, amounting to 976,000,000 pounds. The carry-over is the result of deducting from the total supply of 1,733,000,000 pounds for the marketing year beginning July 1, 1937, the estimated domestic consumption of 350,000,000 pounds and estimated exports of 407,000,000 pounds for such marketing year.

## II

### The Producer Referendum

The Secretary, acting pursuant to and in accordance with subsections (c) and (d) of section 312 of the act, conducted a referendum of farmers who were engaged in the production of the 1937 crop of flue-cured tobacco to determine whether such farmers were in favor

of or opposed to the aforesaid national marketing quota for such tobacco. The Secretary, on February 18, 1938, issued instructions for the holding of the referendum, and fixed March 12, 1938, as the day upon which the referendum should be held (Exhibit No. 2). The referendum was held on March 12, 1938, and the result thereof was as follows: 255,095 votes cast, of which 219,842 votes, or 86.2 percent, were favorable to the national marketing quota, and 35,253 votes, or 13.8 percent, were opposed thereto. The Secretary, acting pursuant to and in accordance with the aforesaid provisions of the act, on March 25, 1938, proclaimed the result as above of the referendum (Exhibit No. 3). A summary of the results of the referendum by States is as follows:

State	Number of votes cast			Percentage in favor
	Yes	No	Total	
Alabama.....	32	0	32	100.0
Florida.....	1,969	1,511	3,480	56.6
Georgia.....	16,083	9,854	25,937	62.0
North Carolina.....	151,503	17,340	168,843	89.7
South Carolina.....	25,191	2,905	28,096	89.7
Virginia.....	25,064	3,643	28,707	89.3
<b>Total.....</b>	<b>219,842</b>	<b>35,253</b>	<b>255,095</b>	<b>86.2</b>

### III

#### General Apportionment and Adjustment of Marketing Quota

The Secretary, acting pursuant to and in accordance with subsections (a), (c), and (e) of section 313 of the act, as amended, made, on July 22, 1938, the following determination of the apportionment and adjustment of the national marketing quota proclaimed as aforesaid (Exhibit No. 4):

States and new farms (i. e., farms on which tobacco is produced for the first time in 5 years)	Apportionment of national quota proclaimed February 18, 1938	Adjustment pursuant to Section 313 (a) to bring State up to 75% of 1937 production	Adjustment pursuant to Section 313 (e), 4% increase all States	Adjustment pursuant to Section 313 (e) to bring State up to minimum State poundage	Totals as apportioned and adjusted
	<i>1,000 pounds</i>	<i>1,000 pounds</i>	<i>1,000 pounds</i>	<i>1,000 pounds</i>	<i>1,000 pounds</i>
Virginia.....	62,940	0	2,518	0	65,458
North Carolina.....	466,998	0	18,680	0	485,678
South Carolina.....	77,126	3,934	3,242	0	84,302
Georgia.....	68,320	0	2,735	0	71,055
Florida.....	8,393	2,191	423	0	11,007
Alabama.....	73	15	4	328	420
New Farms.....	21,150	0	0	0	21,150
<b>Total U. S.....</b>	<b>705,000</b>	<b>6,140</b>	<b>27,600</b>	<b>328</b>	<b>739,068</b>

The above determination was made on the basis of estimates as to requirements for small farms.



When information became available showing the requirements of small farms, the Secretary, on August 13, 1938, made a revised determination of the apportionment and adjustment made as aforesaid, as follows (Exhibit No. 5):

States and new farms (i. e., farms on which tobacco is produced for the first time in 5 years)	Apportionment of national quota proclaimed February 18, 1938	Adjustment pursuant to Section 313 (a) to bring State up to 75% of 1937 production	Adjustment pursuant to Section 313 (e), 4% increase all States	Adjustment pursuant to Section 313 (e) to bring State up to minimum State poundage	Totals as apportioned and adjusted
	<i>1,000 pounds</i>	<i>1,000 pounds</i>	<i>1,000 pounds</i>	<i>1,000 pounds</i>	<i>1,000 pounds</i>
Virginia.....	66,215	0	2,649	0	68,864
North Carolina.....	469,071	0	18,763	0	487,834
South Carolina.....	69,212	11,848	3,242	0	84,302
Georgia.....	71,637	0	2,865	0	74,502
Florida.....	7,645	2,939	423	0	11,007
Alabama.....	70	18	4	328	420
New Farms.....	21,150	0	0	0	21,150
Total U. S. ....	705,000	14,805	27,946	328	748,079

## IV

## Administrative Regulations

The Secretary, acting pursuant to and in accordance with the applicable provisions of the act, as amended, issued the following regulations and instructions, and prescribed the following forms to be used in connection therewith, in respect to the establishment, identification, transfer, notice, and review of farm marketing quotas for flue-cured tobacco for the marketing year beginning July 1, 1938, and ending June 30, 1939, and in respect also to the collection of penalties for the marketing during such marketing year of flue-cured tobacco in excess of any farm marketing quota:

(1) Regulations Pertaining to Flue-cured Tobacco Marketing Quotas for the 1938-39 Marketing Year (Form 38-Tobacco 28), issued July 22, 1938 (Exhibit No. 6). These regulations relate generally to farm marketing quotas, to the marketing of flue-cured tobacco, and to penalties, marketing cards, transfer of quotas, and records and reports. The following forms were prescribed for use in connection with such regulations:

- (a) 1938-39 Marketing Card (Form 38-Tobacco 14) (Exhibit No. 6 (a));
- (b) Operator's Receipt for Marketing Card (Form 38-Tobacco-13) (Exhibit No. 6 (b));
- (c) Request for Sale Subject to Penalty (Form 38-Tobacco 27) (Exhibit 6 (c));
- (d) Memorandum of Warehouse Sale (Form 38-Tobacco 17) (Exhibit 6 (d));
- (e) Memorandum of Nonwarehouse Sale (Form 38-Tobacco 18) (Exhibit 6 (e));

- (f) Certificate of Exemption (Form 38-Tobacco 25) (Exhibit 6 (f));
  - (g) Authorization for Transfer (Form 38-Tobacco 23) (Exhibit 6 (g));
  - (h) Warehouseman's Transfer Agency Agreement (Form 38-Tobacco 26) (Exhibit 6 (h));
  - (i) Record of Quota Transfer (Form 38-Tobacco 15) (Exhibit 6 (i));
  - (j) Warehouseman's Record of Transfers (Form 38-Tobacco 24) (Exhibit 6 (j));
- (2) Instructions for Determination of Flue-cured Tobacco Farm Marketing Quotas for 1938 (Form 38-Tobacco 11), issued June 16, 1938, including supplements thereto (Exhibit 7). The following forms were prescribed for use in connection with such instructions:
- (a) Sales Record Sheet (Form 38-Tobacco-7) (Exhibit 7 (a));
  - (b) Farm Data Sheet (Form 38-Tobacco-8) (Exhibit 7 (b));
  - (c) Farm Quota Sheet (Form 38-Tobacco-9) (Exhibit 7 (c)).
- (3) Regulations Governing the Publication, Notice, and Review of Farm Marketing Quotas (Form 38-A.A.A.-2), issued July 13, 1938 (Exhibit 8). The following forms were prescribed for use in connection with such regulations:
- (a) Listing Sheet for Use in Publication of Farm Marketing Quotas (Form 38-Tobacco-10) (Exhibit 8 (a));
  - (b) Notice of Farm Marketing Quota for Flue-cured Tobacco (Form 38-Tobacco-12) (Exhibit 8 (b));
  - (c) Forms for use of review committees:
    - (i) Oath to be taken by each member of committee (Exhibit 8 (c));
    - (ii) Application for Review of Farm Marketing Quotas (Form 38-AAA-3) (Exhibit 8 (d));
    - (iii) Notice of Untimely Filing of Application for Review (Form 38-AAA-4) (Exhibit 8 (e));
    - (iv) Notice of Insufficiency of Application for Review (Form 38-AAA-5) (Exhibit 8 (f));
    - (v) Notice of Hearing on Application for Review (Form 38-AAA-6) (Exhibit 8 (g));
    - (vi) Temporary Order of Dismissal of Application for Review (Form 38-AAA-7) (Exhibit 8 (h));
    - (vii) Determination of Review Committee on Application for Review (Form 38-AAA-8) (Exhibit 8 (i)).

(4) The form of Articles of Association of County Agricultural Conservation Associations (Form ACP-8/71) (Exhibit 8½), under which the organization of county and community committees is perfected, which committees are utilized by the Secretary of Agriculture in administering the tobacco quota provisions of Title III of the Agricultural Adjustment Act of 1938.

## V

**The Plaintiffs**

The plaintiffs herein are citizens and residents respectively of Lowndes County, Georgia, and the adjoining counties in South Georgia and North Florida, all in the vicinity of Valdosta, Georgia. Each of them is engaged in general farming and each grows, amongst other agricultural commodities, what is commonly called flue-cured tobacco on his farm located in the county of his residence or in an adjoining county.

## VI

**The Defendants**

The defendants herein are tobacco auction warehousemen, doing business in the city of Valdosta, Lowndes County, Georgia, and each of the said defendants is a resident of the said State and county.

## VII

**Marketing Quotas for Farms of Plaintiffs**

In accordance with the applicable provisions of the act, as amended, and the regulations and the instructions issued by the Secretary thereunder, there was established for each of the farms of the plaintiffs a marketing quota for flue-cured tobacco for the marketing year beginning July 1, 1938, and ending June 30, 1939. Each quota thus established was for an amount less than the amount of such tobacco marketed from the farm in 1938. The plaintiffs do not complain of the amount, as such, of their respective farm marketing quotas. Each of the plaintiffs in 1938 marketed flue-cured tobacco from his farm through at least one of the defendants, and each of the defendants sold such tobacco at auction for one or more of the plaintiffs. None of the tobacco so marketed was intended for nicotine or other by-products uses. The tobacco was hauled by the plaintiffs to the said warehouses for the purpose of sale either on trucks, wagons, or other similar private conveyances. The customary method of marketing flue-cured tobacco is through tobacco warehouses such as are operated by defendants.

Flue-cured tobacco was thus marketed by each of the plaintiffs in excess of the marketing quota established for the farm of such plaintiff and, if the applicable provisions of the act are valid, the defendants are liable for the payment to the Secretary of the pen-

alty prescribed by the act for the marketing of flue-cured tobacco in excess of a farm marketing quota. At the time of the filing of the original bill of complaint in this case, the defendants had announced to the plaintiffs the intention of the defendants to deduct, in accordance with the provisions of the act, from the purchase price of the excess tobacco sold through defendants an amount equivalent to the penalty prescribed by the act to be paid by the defendants to the Secretary.

An order of this court requires the defendants to pay to the clerk of this court, subject to the further order of this court, the equivalent of such sums of money as are otherwise payable, under the provisions of the act, to the Secretary as penalties.

### VIII

#### **The 1938 Tobacco Crop—Establishment of Quotas and Maturity of Crop**

The marketing season for flue-cured tobacco in Georgia and Florida begins on or about the first day of August and ends on or about the first day of September. It was during this season in 1938 that the plaintiffs marketed their flue-cured tobacco through the defendants. Notice of the marketing quota for the farm of each of the plaintiffs was given to such plaintiff shortly before the opening of auction markets of defendants. Prior to the time of receiving said notice, each of the plaintiffs had largely, if not wholly, completed the planting, cultivating, harvesting, curing, and grading of his flue-cured tobacco. Prior to the receipt of such notice, no one of the plaintiffs knew, or had any way of knowing, the exact amount of his farm marketing quota but, at the time of the preparation of the original bill of complaint in this cause, each of the plaintiffs had reached the conclusion, based on available information indicating a large yield in Florida and Georgia, that he would probably market flue-cured tobacco in excess of any quota for his farm. At the time of the approval of the act by the President on February 16, 1938, each of the plaintiffs had planted out his seedbeds and about the middle of March began the transplanting of plants in the fields.

In accordance with the custom of tobacco growers in South Georgia and North Florida, the plaintiffs began to arrange for the planting of their 1938 tobacco crop in December 1937. At, or about that time, it was necessary, in following the best methods of producing tobacco, for the plaintiffs to prepare with great care, trouble, and expense the tobacco beds in which the seeds are sown. It was necessary to cultivate the seedbeds carefully and sow the seed therein, water the seedbeds whenever they needed water, cover the beds with cloth in order that the plants might be protected from the cold, and otherwise to take care of the plants therein until they reached a size requisite for transplanting. It was then necessary that transplanting take place in the fields, prepared and fertilized for that purpose. The fields were fertilized with a large amount of expensive fertilizer and care-

fully cultivated. The tobacco plants were sprayed diligently in order to insure a reasonable degree of success in producing a fair crop of tobacco. The harvesting of the crop began during the month of June 1938. In the month of July 1938, harvesting continued and was followed by the curing and grading of the tobacco. All of this requires much labor, care, and expense. The major portion of the flue-cured tobacco crop in South Georgia and North Florida is usually gathered and ready for market by the first day of August and this condition existed in the year 1938. Practically all marketings from the 1938 Georgia and Florida flue-cured tobacco crop have been completed, the total amounting to approximately 107,000,000 lbs. sold for \$21,700,000. Of this, approximately 8,280,000 lbs. were marketed in excess of farm marketing quotas, the penalty prescribed by the act upon these marketings being approximately \$374,000.

The production of flue-cured tobacco requires, at prevailing price levels, a cash outlay of around \$30 to \$40 per acre for fertilizer, plant bed covering, twine, poison for insects and worms, etc. Use of land and of mules, ploughs, curing barns, storage barns, and other permanent and semi-permanent equipment will require average expenditures over a period of years ranging from \$20 to \$30 per acre, with a cash outlay for repairs and replacements of an indeterminate amount from year to year. The other principal item of cost in the production of flue-cured tobacco is represented by a labor requirement of between 300 to 400 man hours per acre for the year. Studies have been made which indicate that usually as among producers the total cost per pound has varied from 10 cents to 20 cents. The difference in cost indicated by these studies results from variations in yields per acre and in the value assigned to labor and the items of cost not requiring specific cash outlay, such as equipment, land, etc.

Available information indicates that with prevailing levels of prices for commodities bought by farmers, there would be many farmers who would receive less than the cost of producing their 1938 crop of tobacco if such crop were sold at an average price equal to one-half of the average price received by such farmers for their tobacco in 1938. Stated generally, one-half of the prices received by farmers for their tobacco in 1938 is less than the cost of producing tobacco on many farms. The number of farmers who would receive an amount equal to the cost of production would depend on the value assigned to operator's family labor, and other items not requiring current cash outlay.

## IX

### The Issues Presented

The issues in this case are confined to the points of law presented by the following contentions of the plaintiffs:

(1) The contention of the plaintiffs that the applicable provisions of the act are, on their face, constitutionally invalid.

(2) The contention of the plaintiffs that the farm marketing quotas established for their respective farms, under the provisions of the act, deprive plaintiffs of their property without due process of law, in violation of the Fifth Amendment of the Constitution of the United States, by reason of the fact that the plaintiffs had seeded their flue-cured tobacco beds and planted, cultivated, and harvested their 1938 flue-cured tobacco crop prior to the establishment of marketing quotas for their respective farms. Without waiving their objection, under paragraph (1) above, that the applicable provisions of the act are vague and indefinite, it is conceded by the plaintiffs that the actions of the Secretary taken as above in proclaiming the national marketing quota, in making the general apportionment and adjustment of quotas, and in the establishment of marketing quotas for the respective farms of the plaintiffs were in accordance with such provisions of the act and the regulations and instructions thereunder, and that all of such quotas were accurately determined, in accordance with the regulations and instructions which the Secretary has promulgated.

## X

### Congressional Investigation of the Tobacco Industry

The Congress, in enacting the Agricultural Adjustment Act of 1938, had before it a vast accumulation of facts relating to the tobacco industry. In addition to numerous prior hearings in connection with previously proposed or enacted legislation relating to farm problems, Congress in the fall of 1937 conducted many hearings throughout the Nation in preparation for its consideration of other proposed legislation, culminating in the enactment of the Agricultural Adjustment Act of 1938. In response to Senate Resolution 158, 75th Congress, Second Session, many hearings were held before the Subcommittee of the Senate Committee on Agriculture and Forestry. The resolution provided for an investigation of agricultural commodity prices, of an ever-normal granary for major agricultural commodities, and of the conservation of national soil resources. The commodities covered by this investigation were tobacco, cotton, rice, wheat, and corn. The hearings on cotton, tobacco, and rice took place in September, October, and November, 1937, in Montgomery, Alabama; Atlanta, Georgia; Winston-Salem, North Carolina; Columbia, South Carolina; Louisville, Kentucky; Houston, Texas; Dallas, Texas; Memphis, Tennessee; New Orleans, Louisiana; Springfield, Illinois; Jefferson City, Missouri; and Oklahoma City and other places in Oklahoma. The matters covered by the hearings are contained in a document entitled "General Farm Legislation", comprising 4633 pages, of which 1916 pages relate to cotton, tobacco, and rice.

The Congress also had before it an extensive report entitled "Principal Farm Products—Agricultural Income Inquiry," comprising 2562 typewritten pages, made by the Federal Trade Commission on

March 2, 1937, in response to Public Resolution No. 61, 74th Congress, adopted August 27, 1935, as amended by Public Resolutions Nos. 86 and 112, 74th Congress. This report consists of several volumes. The facts of the tobacco industry constitute an important part of the report. The report deals with (a) the decline in agricultural income in comparison with changes in incomes of principal manufacturers and distributors; (b) shares of the consumer's dollar going to farmers, manufacturers, and distributors; (c) control of the manufacture and distribution of principal farm products; (d) the legal aspects of the inquiry; (e) the extent and effect of cooperative marketing; (f) the investments and profits of manufacturers and distributors; (g) the growth in capitalization and assets of manufacturers and distributors; and (h) the channels of manufacture and distribution, etc.

The Congress also had before it the following official reports:

(1) A pamphlet entitled "American Tobacco Types, Uses, and Markets" (Circular No. 249, United States Department of Agriculture, 1933), comprising 88 pages, by Charles E. Gage, Senior Marketing Specialist, in Charge, Tobacco Section, Bureau of Agricultural Economics.

(2) A report entitled "Marketing of Leaf Tobacco in the Flue-cured Districts of the States of North Carolina and Georgia," comprising 54 pages, to the Federal Trade Commission, made by Herbert L. Anderson, Chief Examiner of the Commission, on May 14, 1931, at the instance of Senator Simmons and Congressman Kerr of North Carolina, Senator George and Congressman Edwards of Georgia, and Congressman Yon of Florida. In the report, there was discussed: (a) regions of production; (b) demand; (c) production; (d) method of marketing; (e) cooperative associations; (f) cigar prices, production, etc.; (g) financial conditions of four principal tobacco manufacturers; and (h) United States Government grading system.

(3) A report entitled "Cooperative Marketing," comprising 721 pages, made by the Federal Trade Commission on April 30, 1928, in response to Senate Resolution No. 34, 69th Congress, Special Session, adopted March 17, 1925. This report dealt with (a) cooperative marketing among tobacco growers; (b) cooperative organization; (c) cooperative association financing; (d) external and internal problems of cooperative marketing associations; (e) cooperative suspensions and failures; and (f) development of cooperative law.

(4) A report entitled "The Tobacco Industry", comprising 129 pages, made by the Federal Trade Commission on December 23, 1925, in response to Senate Resolution 329, 68th Congress, 2d Session, adopted February 9, 1925 (Senate Document No. 34, 69th Congress, 1st Session). This report dealt with (a) tobacco marketing; (b) the relation between the American and Imperial Tobacco Companies; and (c) the factors affecting the progress of cooperative associations.

(5) A report entitled "Prices of Tobacco Products", comprising 109 pages, made by the Federal Trade Commission on January 17,

1922, in response to Senate Resolution No. 129, 67th Congress, adopted August 9, 1921. This report dealt with (a) supply and demand factors; (b) prices; (c) rate of return on investment of the successor companies; (d) cooperation among tobacco growers; (e) restriction of competition in the purchase of leaf tobacco; and (f) restriction of competition in the sale of manufactured tobacco products, etc.

(6) A report entitled "The Tobacco Industry", comprising 162 pages, made by the Federal Trade Commission on December 11, 1920, in response to House Resolution No. 533, 66th Congress, adopted June 3, 1920. This report dealt with (a) price fluctuations; (b) causes of decline in prices; and (c) evidence as to violation of the anti-trust laws.

(7) A report entitled "The Tobacco Industry", comprising 1,304 pages, made by the Commissioner of Corporations on February 25, 1909, September 24, 1911, and March 15, 1915, to the Department of Commerce and Labor. This report dealt with (a) the position of the tobacco combination in the industry; (b) compensation, investment, and earnings; and (c) prices, costs, and profits.

## XI

### Classes of Tobacco

While tobacco is of American origin, it is not exclusively an American product at the present time. Annual world production is now about 5 billion pounds, a third of which is produced within the United States. The recent development of the growth of types of tobacco in foreign countries which compete with types grown in the United States has materially affected the production and marketing of certain types of our tobacco. However, certain tobacco regions in the United States produce kinds of tobacco that are unique in the world as to quality and desirability for particular purposes.

Tobacco has occupied an important place in the commercial development of the United States from earliest Colonial times. Even before the founding of Jamestown in 1607, there was an extensive demand for American tobacco in England and on the Continent. The first extensive cultivation of tobacco took place in Virginia. England imported this tobacco. For the early settlers of Virginia and Maryland, tobacco was not only the sole money crop—it was money itself.

By the close of the eighteenth century, tobacco culture had spread to other regions in the United States, including Kentucky, Tennessee, and Ohio. The South Atlantic States, however, were the chief sources of American tobacco until the Civil War during which time Kentucky obtained first place and has since been first or second only to North Carolina.

The characteristics of the leaf are influenced greatly by soil and climatic conditions. This influence is more pronounced in respect to tobacco than almost any other important agricultural commodity.



Its cultivation requires particular knowledge and experience as well as relatively large investments in special equipment. The growing of tobacco is a speciality, and the manufacturing industry looks to well-defined areas for its supply.

The several kinds of tobacco, broadly classified, are flue-cured, Burley, Maryland, dark air-cured, fire-cured, and cigar-filler, binder, and wrapper. Each of these tobaccos possesses certain well-known characteristics which make it desirable for special purposes of manufacture or for export, and the region in which each kind is produced is rather clear-cut and distinct (Exhibit No. 9—Map of Tobacco Growing Areas). In practically all regions producing tobacco, the acreage of land devoted to the crop is much less than the available land.

The types comprising flue-cured tobacco are known as Nos. 11, 12, 13, and 14. The flue-cured tobacco region is divided into two general districts commonly referred to as the old belt and the new belt, corresponding roughly to the physiographic areas known as the Piedmont and Atlantic Coastal Plains. Old belt tobacco is known as Type 11 and is produced on loam and sandy loam soils. Types 12, 13, and 14 comprise the new belt group. They are grown on the more sandy and gravelly soil of marine origin in the coastal plains. A third district, known as the middle belt, consists of a rather narrow strip in North Carolina along the fall line which divides the Piedmont and Coastal Plain regions. In this strip, where over-lapping has brought about commingling of different classes of soil, the tobacco possesses some of the characteristics of both the old belt and the new belt. Type 12, known as eastern North Carolina tobacco, is produced in a part of North Carolina lying east of the fall line. Type 13, known as South Carolina tobacco, is produced in the State of that name and in a small adjoining part of North Carolina. Type 14 is produced in the southern part of Georgia, northern Florida, and southeastern Alabama (Exhibit 9—Map of Tobacco Growing Areas). The old belt flue-cured tobacco is generally heavier in body and darker in color than the new belt tobacco. Differences among the types in the new belt group are traceable principally to variations in soil.

## XII

### Culture of Flue-cured Tobacco

The production of flue-cured tobacco requires more hours of man and workstock labor than most other farm products. Cultivation begins with the preparation of seed beds which takes place from December to February in Georgia and Florida and from December to March in the more northern producing States. Careful preparation and protection of the bed generally determines the degree of success obtained in securing a supply of plants for setting in the field.

The preparation of the land devoted to tobacco begins soon after the seed beds are sown. Immediately before transplanting takes place, relatively large quantities of high grade fertilizer, averaging about 1,000 pounds per acre, are applied to the land. In the course of cultivation, additional quantities of fertilizer are often applied.

Transplanting of flue-cured tobacco usually begins around the first of April in Florida, Georgia, and South Carolina, and extends into May and early June in North Carolina and Virginia. The number of plants set per acre varies upward from about 6,000. Soon after the plants "take root" and begin to grow, cultivation begins and continues throughout the growing season. This cultivation consists of plowing, poisoning for insects and worms, topping and removal of suckers.

When the leaves begin to mature, harvesting and curing begins and continues until all the suitable leaves on the stalk have been removed. The process of harvesting is through "cropping" or pulling off the leaves as they mature. Four to six "croppings" are usually required to complete the harvesting of a crop of tobacco. The leaves are strung on sticks and placed in the curing barn where heat is applied continuously through a furnace and "flues" or large pipes laid about the floor of the barn so that the leaf does not come in contact with smoke from the fuel used. Curing requires from three to four days. After the tobacco is cured, it is packed away to be later removed from the sticks, sorted or graded, and prepared for marketing. Harvesting and curing begin in Florida, Georgia, and Alabama in June and early July where the auction markets open in late July or early August. Harvesting and curing comes later in the year in North Carolina and Virginia, lasting sometimes into October.

Flue-cured tobacco is often referred to as "bright tobacco" and owes its name primarily to the method employed in curing the leaf. The curing process is rapid and is completed within a few days. Flue-cured tobacco has come to be by far the world's most important commercial class of tobacco in quantity produced and marketed. Among the outstanding characteristics of the cured leaf are its bright lemon or orange color, its distinctive aroma, and its high content of sugar. Its principal use is for export and domestic manufacture of straight and blended cigarettes, pipe-smoking tobacco, and plug-chewing tobacco, which has resulted in a well-established demand for flue-cured tobacco. Over a long period of years the tastes of consumers for tobacco have become accustomed to certain qualities. The trade, developed by catering to these tastes, looks to certain well-defined areas for continued supplies of the grades and qualities of flue-cured leaf tobacco. As a consequence, markets have been established in the flue-cured belt where the buyers and farmers assemble for the sale of the tobacco. The present demand for flue-cured tobacco arises principally from the use of cigarettes in the United States and foreign countries.

## XIII

**Leaf Tobacco Production**

Tobacco is produced in more than half the States of the Union, the principal commercial areas being in the States of Alabama, Connecticut, Florida, Georgia, Indiana, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Minnesota, Missouri, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, West Virginia, and Wisconsin. The average annual production for the five-year period, 1932-36, was 1,184,518,000 pounds. The total production in 1935 was 1,297,198,000 pounds; in 1936, 1,155,385,000 pounds; and in 1937, 1,553,523,000 pounds. Table 1 shows the United States average annual farm production during the five years 1932-1936 by States and principal classes of tobacco.

The six States of Georgia, Kentucky, North Carolina, South Carolina, Tennessee, and Virginia accounted for nearly 90 percent of the total production in this period, and North Carolina and Kentucky produced approximately 60 percent of the total production. Flue-cured tobacco, with an average annual production of 631,633,000 pounds, and Burley tobacco, with an average annual production of 274,798,000 pounds, amounted to approximately 75 percent of the total production of all kinds of tobacco during the period (Table 1).

Flue-cured tobacco is produced in the six States of Alabama, Florida, Georgia, North Carolina, South Carolina and Virginia. The average annual production of such tobacco in these States for the five-year period 1932-1936 was 631,633,000 pounds (Table 1). The production of such tobacco in such States in 1935 was 811,238,000 pounds; in 1936, 682,907,000 pounds; and in 1937, 855,000,000 pounds. Table 2 shows the annual production of flue-cured tobacco in the United States by States for the nineteen year period, 1919 to 1937.

The production of flue-cured tobacco in 1937 in these six States was as follows: Alabama, 118,000 pounds; Florida, 14,112,000 pounds; Georgia, 73,935,000 pounds; South Carolina, 108,080,000 pounds; North Carolina, 586,755,000 pounds; and Virginia, 72,000,000 pounds; making a total of 855,000,000 pounds (Table 2). Flue-cured tobacco constitutes the principal kind of tobacco produced in each of these six States (Table 1).

Tables, 2a, 2b, and 2c show flue-cured tobacco acreage, yield, production, price, and farm value for the period 1928-1937 for the United States, Virginia, North Carolina, South Carolina, Georgia, and Florida, respectively.

The acreage devoted to tobacco production is usually a small portion of the total acreage cultivated on the farm. The general scheme of farming involves many share-croppers or tenants. The crop frequently is financed by the landowner or some party other than the actual producer.

TABLE 1.—Tobacco: Average Annual Production, By Principal Kinds, By States, 1932-36

State	Flue-cured	Burley <sup>1</sup>	Maryland	Fire-cured and Dark Air-cured	Cigar Filler and Cigar Binder	Cigar Wrapper	Total All Kinds	Percent of U. S. Total
	1,000 pounds	1,000 pounds	1,000 pounds	1,000 pounds	1,000 pounds	1,000 pounds	1,000 pounds	Percent
Connecticut.....					15,583	4,493	20,076	1.7
Florida.....	4,306				346	1,665	6,317	.5
Georgia.....	50,347				216	362	50,925	4.3
Indiana.....		6,656		731	<sup>2</sup> 152		7,539	.6
Kansas.....		258					258	( <sup>3</sup> )
Kentucky.....		191,806		76,181			267,987	22.6
Maryland.....			27,302				27,302	2.3
Massachusetts.....					5,884	988	6,872	.6
Minnesota.....					455		455	( <sup>4</sup> )
Missouri.....		4,822					4,822	.4
New York.....					828		828	.1
North Carolina.....	451,108	5,399					456,507	38.5
Ohio.....		10,149			16,699		26,848	2.3
Pennsylvania.....					30,330		30,330	2.6
South Carolina.....	89,602						89,602	5.9
Tennessee.....		44,858		54,980			99,838	8.4
Virginia.....	56,220	8,540		21,306			86,066	7.3
West Virginia.....		2,310					2,310	.2
Wisconsin.....					19,586		19,586	1.7
Alabama <sup>4</sup> .....	50	( <sup>3</sup> )					50	( <sup>3</sup> )
United States..	631,633	274,798	27,302	153,198	90,079	7,508	1,184,518	100.0

<sup>1</sup> Small quantities of Burley tobacco are also produced in the States of Illinois, South Carolina, Georgia, Arkansas, Alabama, and Oklahoma.

<sup>2</sup> 2-year average.

<sup>3</sup> Less than one-tenth of one percent.

<sup>4</sup> Estimated from records of the Agricultural Adjustment Administration, United States Department of Agriculture.

Compiled from reports of the Bureau of Agricultural Economics, United States Department of Agriculture

TABLE 2.—Tobacco, Flue-cured: Production by States, 1919-1937

Year	Virginia	North Carolina	South Carolina	Georgia	Florida	Alabama	United States
	1,000 pounds	1,000 pounds	1,000 pounds	1,000 pounds	1,000 pounds	1,000 pounds <sup>1</sup>	1,000 pounds
1919.....	67,327	319,276	78,660	11,621			476,884
1920.....	114,428	423,703	66,150	11,687			615,968
1921.....	62,568	246,540	43,230	6,456			358,794
1922.....	96,683	271,170	43,560	4,026			415,439
1923.....	97,937	396,354	77,214	9,099	132		580,736
1924.....	81,475	276,819	47,530	29,818	1,693		437,335
1925.....	77,845	373,370	72,750	47,859	3,260		575,084
1926.....	82,325	378,274	57,915	39,078	2,480		560,072
1927.....	94,724	482,982	79,083	57,931	4,069		718,789
1928.....	74,278	493,132	84,360	82,894	4,435		739,099
1929.....	85,050	484,636	87,320	87,906	5,100		750,012
1930.....	76,300	581,200	98,600	103,304	5,767		865,171
1931.....	60,000	476,382	69,870	58,930	4,350		669,532
1932.....	32,240	288,750	39,440	12,075	1,200		373,705
1933.....	53,720	530,133	88,580	57,246	3,700		733,379
1934.....	52,875	412,055	56,880	31,562	3,408		556,780
1935.....	74,390	572,625	89,760	68,400	6,020	43	811,238
1936.....	67,875	451,975	73,350	82,450	7,200	57	682,907
1937.....	72,000	586,755	108,080	73,935	14,112	118	855,000

<sup>1</sup> Estimated from records of the Agricultural Adjustment Administration, United States Department of Agriculture.

Compiled from reports of the Bureau of Agricultural Economics, United States Department of Agriculture.

TABLE 2a.—Tobacco, Flue-Cured: Acreage, Yield, Production, Price, Farm Value

UNITED STATES<sup>1</sup>

Year	Acreage	Yield	Production	Price per Pound	Farm Value
	<i>Acres</i>	<i>Pounds</i>	<i>1,000 Pounds</i>	<i>Cents</i>	<i>1,000 Dollars</i>
1928.....	1,119,900	660	739,099	17.3	128,067
1929.....	1,085,700	691	750,012	18.0	134,902
1930.....	1,144,200	756	865,171	12.0	103,418
1931.....	979,500	684	669,532	8.4	56,411
1932.....	617,500	605	373,705	11.6	43,405
1933.....	920,600	797	733,379	15.3	112,145
1934.....	684,200	814	556,780	27.3	151,727
1935.....	874,000	928	811,195	20.0	162,170
1936.....	864,500	790	682,850	22.2	151,553
1937.....	973,300	878	854,882	23.0	196,782

<sup>1</sup> No data for Alabama are included in the above compilation. Production data for Alabama are shown in Table 2.

## VIRGINIA

1928.....	138,500	536	74,278	17.1	12,714
1929.....	135,000	630	85,050	17.4	14,799
1930.....	140,000	545	76,300	7.9	6,028
1931.....	100,000	600	60,000	6.5	3,900
1932.....	62,000	520	32,240	8.1	2,611
1933.....	79,000	680	53,720	15.9	8,541
1934.....	70,500	750	52,875	28.1	14,858
1935.....	86,500	860	74,390	20.1	14,952
1936.....	90,500	750	67,875	22.3	15,136
1937.....	100,000	720	72,000	22.2	15,984

Compiled from Reports of the Bureau of Agricultural Economics, United States Department of Agriculture.

TABLE 2b.—Tobacco, Flue-cured: Acreage, Yield, Production, Price, Farm Value

## NORTH CAROLINA

Year	Acreage	Yield	Production	Price Per Pound	Farm Value
	<i>Acres</i>	<i>Pounds</i>	<i>1,000 Pounds</i>	<i>Cents</i>	<i>1,000 Dollars</i>
1928.....	712,400	692	493,132	19.0	93,450
1929.....	729,300	665	434,636	18.5	89,470
1930.....	768,000	757	581,200	12.9	74,731
1931.....	688,500	692	478,552	8.6	42,024
1932.....	462,500	624	268,750	12.1	34,949
1933.....	667,800	794	530,133	16.1	85,530
1934.....	486,500	847	412,055	28.6	117,999
1935.....	612,500	935	572,625	20.3	116,418
1936.....	591,000	765	461,975	22.8	102,922
1937.....	665,000	882	586,755	24.0	140,848

Compiled from reports of the Bureau of Agricultural Economics, United States Department of Agriculture.

## SOUTH CAROLINA

1928.....	148,000	570	84,360	12.7	10,714
1929.....	118,000	740	57,320	15.5	13,535
1930.....	116,000	850	98,600	12.0	11,832
1931.....	102,000	685	69,070	9.2	6,428
1932.....	68,000	590	39,440	11.3	4,457
1933.....	103,000	860	88,580	12.6	11,161
1934.....	72,000	790	56,820	21.6	12,286
1935.....	96,000	935	89,760	18.8	16,875
1936.....	90,000	815	73,350	19.9	14,597
1937.....	112,000	965	108,080	20.8	22,481

<sup>1</sup> Compiled from report of the Bureau of Agricultural Economics, United States Department of Agriculture.

TABLE 2c.—Tobacco, Flue-cured: Acreage, Yield, Production, Price, Farm Value  
GEORGIA

Year	Acreage	Yield	Production	Price Per Pound	Farm Value
	<i>Acres</i>	<i>Pounds</i>	<i>1,000 Pounds</i>	<i>Cents</i>	<i>1,000 Dollars</i>
1928.....	113,900	728	82,894	12.8	10,645
1929.....	96,800	910	67,906	18.4	16,175
1930.....	112,900	915	103,304	9.9	10,227
1931.....	83,000	710	58,930	6.4	3,772
1932.....	23,000	525	12,075	10.4	1,256
1933.....	65,800	870	57,246	11.3	6,469
1934.....	60,500	625	31,562	18.7	5,902
1935.....	72,000	950	68,400	18.8	12,859
1936.....	85,000	970	82,450	21.0	17,314
1937.....	79,500	930	73,935	19.6	14,491

Compiled from reports of the Bureau of Agricultural Economics, United States Department of Agriculture.

FLORIDA

1928.....	7,100	625	4,435	12.3	544
1929.....	6,500	750	5,100	18.1	923
1930.....	7,300	790	5,767	10.4	600
1931.....	6,000	725	4,350	6.6	287
1932.....	2,000	600	1,200	11.0	132
1933.....	5,000	740	3,700	12.0	444
1934.....	4,700	725	3,408	20.0	682
1935.....	7,000	860	8,020	17.7	1,068
1936.....	8,000	900	7,200	22.0	1,584
1937.....	16,800	840	14,112	21.1	2,978

Compiled from reports of the Bureau of Agricultural Economics, United States Department of Agriculture.

XIV

Marketing of Tobacco Leaf

There are approximately 750,000 families engaged in the production and marketing of tobacco. Of this number, around 300,000 families are engaged in the marketing and production of flue-cured tobacco. During most years some part of the crop is not marketed unless the price is favorable. In the case of flue-cured tobacco, statistics showing production are based on marketings and do not include the amount of tobacco withheld from market. In 1931 several million pounds of tobacco in Virginia was not offered for sale by the producers. In some instances buyers have refused to make bids on tobacco offered for sale.

The crop is marketed through middlemen consisting of auction warehouses, wholesale merchants, country buyers, commission merchants, exporters, export agents, brokers and cooperative marketing associations. The Bureau of Census reports 830 of these middlemen in 1935 whose net sales aggregated \$371,096,000 (Table 3). It is principally through facilities of these middlemen that leaf tobacco finds its way to domestic and foreign manufacturers of tobacco products.

There are three principal methods of marketing tobacco by producers. Of these methods, the most important is marketing through

auction warehouses. Approximately 85 percent of all tobacco is bought at auction warehouses. Most of the flue-cured and Burley tobacco and a large part of the dark air-cured and fire-cured tobaccos are bought at such warehouses. In the flue-cured tobacco producing States and in some other States, auction at warehouses constitutes about the only extensive method of marketing available at the present time. A few sales are made to dealers outside the auction warehouses. Large quantities of tobacco have been marketed in prior years through cooperative associations of producers.

When tobacco is sold over an auction warehouse floor the warehouse operator calculates the gross sales value of the lot of tobacco sold by the producer. From this gross value is deducted a fee for handling and selling the tobacco. The producer is paid the net proceeds from the sale by the warehouseman who later collects the gross value of the tobacco from the purchaser.

A second method of marketing is through consignment to a broker or cooperative association. This method is employed in connection with the marketing of Maryland tobacco. This tobacco, packed in hogsheads by the producers, is sold at a closed bid auction, with buyers making the rounds of Baltimore agencies and submitting sealed bids based on samples of each hogshead. There are a few scattered cooperative associations dealing in kinds other than Maryland tobacco, but the quantity of leaf tobacco handled in this manner is small.

The marketing of tobacco through cooperative marketing associations is available to tobacco growers in all States, including flue-cured tobacco growers in Georgia and Florida, in lieu of selling tobacco over an auction warehouse floor. The organization, financing and operation of such associations are assisted by agencies of the Federal Government. By marketing their tobacco through cooperative marketing associations, growers avoid any necessity of marketing their tobacco during the short period when auction warehouses are in operation. Before flue-cured tobacco can be stored so as to keep in a satisfactory condition for sale at some future period, it is necessary that it be redried and packed in hogsheads. Associations which do not own their own redrying plants can have the tobacco of their members redried in private plants. After the tobacco has been redried and packed it can be stored for an indefinite period. During the marketing season in 1938 there were no such cooperative associations in North Florida and South Georgia.

The remainder of the crop consisting chiefly of cigar-leaf tobacco, is bought at the farm, sold through cooperative associations or in a manner somewhat similar to that followed in the case of Maryland tobacco. In some instances, contracts are entered into during the growing season between producer and buyer, or sales are negotiated after the tobacco is harvested.

Neither in the flue-cured tobacco farming industry nor in the operation of tobacco warehouses through which such tobacco is marketed,

have there been any labor disputes, or any danger or any hint of labor disputes, threatening the free flow of such tobacco in interstate or foreign commerce.

TABLE 3.—*Middleman in Leaf Tobacco, United States, 1935*

Type of Operation	Number of Establishments <sup>1</sup>	Net Sales (Thousands of Dollars)	Active Proprietors and Firm Members	Employers (Full-time and part-time) Average For Year
Wholesale Merchants.....	162	46,622	94	3,956
Exporters.....	43	21,207	28	2,028
Auction Companies.....	303	181,348	346	3,970
Brokers.....	12	670	11	6
Commission Merchants.....	34	13,152	33	363
Export Agents.....	17	34,237	4	1,706
Imports Agents.....	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )	( <sup>2</sup> )
Country Buyers.....	241	71,391	121	4,005
Cooperative Marketing Associations.....	18	2,469	-----	120
U. S. total.....	830	371,096	637	16,152

<sup>1</sup> Number of establishments based on ownership.

<sup>2</sup> Not separated according to specified farm commodities handled.

Compiled from reports of the Bureau of the Census, United States Department of Commerce.

## XV

### Auction Marketing

There are numerous auction warehouses throughout the tobacco producing States. Many of them are connected in some capacity with others. Many of the warehouse operators are members of an association of warehousemen. Some warehouse owners operate in more than one State at the same time or at successive times as the marketing season advances. In 1935 the aggregate net sales in tobacco warehouses amounted to \$181,348,000 (Table 3). During the 1937-38 marketing season the number of such warehouses having sales of flue-cured tobacco were as follows: Florida, 6; Georgia, 57; South Carolina, 36; North Carolina, 167; and Virginia, 34; making a total of 300. During the 1937-38 marketing season, producer sales of flue-cured tobacco through such warehouses were as follows: Florida, 4,869,000 pounds; Georgia, 83,243,000 pounds; in South Carolina, 101,352,000 pounds; in North Carolina, 572,499,000 pounds; and in Virginia, 92,850,000 pounds; making a total of 854,813,000 pounds. The average annual producer sales of flue-cured tobacco through such warehousemen for the five-year period 1932-36 were 631,321,800 pounds (Table 5).

Substantial quantities of flue-cured tobacco are marketed by producers in one State through warehouses in other States. In 1937 the production in Alabama is estimated to be 118,000 pounds, with no producer sales within that State; the production in Florida was 14,112,000 pounds, with producer sales therein of only 4,869,000 pounds; the production in Georgia was 73,935,000 pounds, with pro-



ducer sales therein of 83,243,000 pounds; the production in South Carolina was 108,080,000 pounds, with producer sales therein of 101,352,000 pounds; the production in North Carolina was 586,755,000 pounds, with producer sales therein of 572,499,000 pounds; and the production in Virginia was 72,000,000 pounds, with producer sales therein of 92,850,000 pounds (Table 4). Substantially the same situation obtained in 1936 and previous years. A tabulation from records of the Agricultural Adjustment Administration of a portion of the sales in 1935 on certain flue-cured tobacco markets revealed that there were marketed through warehousemen located in Georgia 3,046,472 pounds produced in Florida and 276,564 pounds produced in South Carolina; through South Carolina warehousemen 919,177 pounds produced in North Carolina; through North Carolina warehousemen 3,953,053 pounds produced in Virginia and 6,101,230 pounds produced in South Carolina; and through Virginia warehousemen 32,099,811 pounds produced in North Carolina (Table 6).

TABLE 4.—*Tobacco, Flue-cured: Producers' Sales, Production, and Sales as Percentage of Production, by Types by States for the 1936 and 1937 Crops*

TYPE OF TOBACCO AND STATE	1936 CROP			1937 CROP		
	Producers Sales Within State <sup>1</sup>	Production Within State <sup>2</sup>	Sales within State as percentage of production within State	Producers Sales Within State <sup>1</sup>	Production Within State <sup>2</sup>	Sales within State as percentage of production within State
Type-14:	<i>1,000 Pounds</i>	<i>1,000 Pounds</i>	<i>Percent</i>	<i>1,000 Pounds</i>	<i>1,000 Pounds</i>	<i>Percent</i>
Florida.....	<sup>3</sup> 3,125	7,200	43.4	<sup>4</sup> 4,869	14,112	34.5
Georgia.....	86,565	82,450	105.0	83,253	73,935	112.6
Total, Type 14.....	89,690	89,650	100.0	88,112	88,047	100.1
Type-13:						
South Carolina.....	69,841	73,350	95.2	101,352	108,080	93.8
North Carolina.....	63,488	51,545	123.2	89,696	71,905	124.7
Total, Type 13.....	133,329	124,895	106.8	191,048	179,985	106.1
Type-12:						
North Carolina.....	212,428	222,680	95.4	290,032	303,250	95.0
Type 11:						
North Carolina.....	158,876	177,750	89.4	192,771	209,600	92.0
Virginia.....	88,423	67,875	130.3	92,850	72,000	129.0
Total, Type 11.....	247,299	245,625	100.7	285,621	281,600	101.4
Total, North Carolina..	434,792	451,975	96.2	572,499	586,755	97.6
Total, United States....	682,746	682,850	100.0	854,813	854,882	100.0

<sup>1</sup> Compiled from reports published by the State Department of Agriculture for the State of Georgia, South Carolina, North Carolina, and Virginia.

<sup>2</sup> Compiled from reports of the Bureau of Agricultural Economics, United States Department of Agriculture.

<sup>3</sup> Unofficial estimate.

<sup>4</sup> Compiled from reports of the Live Oak, Florida Tobacco Board of Trade.

TABLE 5.—Tobacco, Flue-cured: Average Producers' Sales, Estimated Average Quantity Used in Domestic Manufacture, and Estimated Average Minimum Quantity to Interstate and Foreign Commerce Before Manufacture for Specified States for the 5 Years, 1932 to 1936

State (1)	Average Producers' Sales for the 5 years, 1932 to 1936 <sup>1</sup> (2)	Estimated Average Quantity Used in Domestic Manufacture for the 5 Years, 1932 to 1936 <sup>2</sup> (3)	Estimated Average Minimum Quantity to Interstate and Foreign Commerce Before Manufacture (Col. 2-Col. 3) (4)
Virginia.....	1,000 pounds 77,541.4	1,000 pounds 60,279.2	1,000 pounds 17,262.2
North Carolina.....	433,951.4	159,453.4	274,518.0
South Carolina.....	65,061.2	2.4	65,058.8
Georgia.....	52,807.8	.2	52,807.6
Florida.....	* 1,960.0	.4	1,959.6
All others.....		61,826.1	
Total United States.....	631,321.8	281,541.7	411,606.2

<sup>1</sup> Compiled from reports of the State Department of Agriculture for the States of Virginia, North Carolina, South Carolina, and Georgia.

<sup>2</sup> Estimates computed from data compiled by the Bureau of Internal Revenue, United States Treasury Department.

<sup>3</sup> Unofficial estimate.

TABLE 6.—Tobacco, Flue-cured: Producers' Sales on Specified Auction Markets after Movement Across State Lines, 1935 Crops

Place of Sale	State in which grown				
	Virginia	North Carolina	South Carolina	Florida	Total
Virginia:	Pounds	Pounds	Pounds	Pounds	Pounds
Clarksville.....		703,874			
Danville.....		24,453,680			
Martinsville.....		2,632,409			
South Boston.....		4,309,848			
Total.....		32,099,811			32,099,811
North Carolina:					
Henderson.....	844,948				
Madison.....	102,524				
Mt. Airy.....	477,560				
Oxford.....	2,141,394				
Reidsville.....	38,722				
Roxboro.....	23,272				
Stoneville.....	209,712				
Warrenton.....	114,921				
Fair Bluff.....			922,629		
Fairmont.....			4,340,715		
Tabor.....			746,886		
Total.....	3,953,053		6,010,230		9,963,283
South Carolina:					
Dillon.....		37,682			
Loris.....		83,686			
Mullins.....		797,809			
Total.....		919,177			919,177
Georgia:					
Adel.....				28,596	
Hahira.....				135,596	
Moultrie.....				170,383	
Nashville.....				143,171	
Pelham.....				52,428	
Statesboro.....			276,564		
Tifton.....				61,665	
Valdosta.....				2,454,633	
Total.....			276,564	3,046,472	3,323,036
Grand total.....	3,953,053	33,018,988	6,286,794	3,046,472	46,305,307

Compiled from records of the Agricultural Adjustment Administration, United States Department of Agriculture.

Producers, after curing their tobacco, sort it into lots on the basis of quality and color, and tie it into small bundles or "hands" of ten to twenty leaves. In Florida and Georgia, however, the leaves are not tied into "hands" but are marketed loose. The producers also grade the tobacco as best they can. Tobacco is then delivered by the producers to the warehouse in motor trucks, wagons, or trailers pulled by family automobiles. After unloading at the warehouse, the bundles or "hands" of tobacco are placed in trays, and weighed under the supervision of the warehouse employees. A ticket is placed on each pile of tobacco giving the name of the owner, the number of pounds of tobacco in the tray, and spaces for the name of the buyer and the price paid. The trays are then arranged by employees of the warehouseman in rows with a passageway between the rows. No distinction is made between tobacco produced in the State and tobacco produced in any other State; nor is the ultimate destination of the leaf known until after sale. The auctioneer who conducts the sale, the warehouseman and his employees walk in the passageway on one side of the row of tobacco trays and the buyers walk in the passageway on the other side of the row. Following the auctioneer on his side of the trays, are the calculators or "bookmen" whose duty it is to make immediate calculation of the total price a tray of tobacco brings, the amount due the warehouseman, the amount due the growers, and also make certain records for the warehouse office. Once the selling has started, it proceeds with great rapidity. Lots of tobacco are sold at auction as rapidly as 360 lots an hour or at the rate of a tray every ten seconds. The auction is in constant motion, the auctioneers proceeding along one side of the row, the buyers following along the other. The rapid rate at which the auctioneer intones the bids and offers the tobacco is such that his words constitute a jargon that cannot be understood except by one familiar with the auction sales system of selling tobacco. It is customary for the warehouseman to make the opening bid. The method used by the buyers in bidding is unusual in that the bid is usually made by a motion of the head, a movement of the hand, a wink of the eye, or some other gesture known only to the auctioneer and bidder. As soon as the sale is made, a ticket marker places the name of the buyer, the price, and the buyer's grade on the warehouse ticket. The calculators, who are usually some 25 to 30 trays behind the sale, complete the calculation as described above. The tobacco is removed by the buyer from the warehouse floor unless the producer-seller rejects the offer by "tucking the ticket." This is accomplished by the seller folding the ticket on the tobacco and laying it back on the tray. This must be done within a few minutes after the sale and can only be done by a producer present at the sale. In such event, the producer may subsequently re-offer his tobacco, or remove it and offer it for sale at another tobacco warehouse, or take it back to his farm to be offered for sale at a later date. Lots which have been bought in by "the house," that is, by the warehouseman, are not removed from the warehouse floor. Such lots are usually dressed up and

put back in line for resale. In order to accommodate the stream of deliveries, the tobacco must be removed from the warehouse floor as rapidly as sold to make way for new lots for the following day's business. The removal is made by the buyer's employees who commingle the tobacco with other tobacco purchased by the buyer on the same day. Such tobacco is moved by truckers to redrying plants or to packing houses for wrapping in burlap sheets for shipment to re-driers.

The marketing season for flue-cured tobacco usually begins on or about the first day of August and extends throughout the greater part of February of the following year. The markets in Florida and Georgia open first. They continue for a period of from three to six weeks. The markets in South Carolina and southern North Carolina open about the middle of August and continue through October, with the bulk of sales occurring prior to October first. The markets for type 12 in North Carolina open about September first and continue through January of the next year. For type 11, the markets in North Carolina and Virginia open, as a rule, in the second or third week of September and continue through February of the next year. The peak of sales is sometime in October or November and the greatest movement from producers to dealers and manufacturers occurs between October first and January first.

The selling season is fixed mainly by the buyers and the warehousemen. At times growers rush tobacco to the market to such an extent that warehousing capacity is overtaxed and the tobacco cannot be placed on sale or auctioned for several days. Since auction warehouses collect commissions or fees on the tobacco sold over their floor, each warehouseman is quite active in trying to obtain the patronage of producers for his own particular warehouse.

## XVI

### Principal Buyers

The manufacturers and dealers, through their representatives, bid upon tobacco offered for sale by producers. The manufacturers and dealers are few in number, and since they have essential information as to the supply of, and demand for, tobacco, the competition among their representatives is limited by instructions as to average prices which can be paid for the various grades of tobacco and the quantity desired. The principal manufacturers are:

The American Tobacco Company, with factories in Kentucky, New York, North Carolina, Ohio, Tennessee, Virginia, and Wisconsin;

Liggett and Myers Tobacco Company, with factories in California, Illinois, Missouri, North Carolina, Pennsylvania, and Virginia; and

The R. J. Reynolds Tobacco Company, Winston-Salem, North Carolina.

The principal dealers are:

The Imperial Tobacco Company, an English company with American headquarters in Richmond, Virginia, which buys tobacco exclusively for shipment to the United Kingdom;

The Universal Leaf Tobacco Company, Richmond, Virginia, comprising a group of twenty-three subsidiaries, engaged in the buying and selling of leaf tobacco in the United States, Canada, China, the Dominican Republic, with agencies in Europe, Asia, Africa, South America, Australia, and Canada.

The Export Leaf Tobacco Company, a subsidiary of the British-American Tobacco Company, Ltd., London, England, which is engaged in buying tobacco for exportation to foreign countries and in buying tobacco for the Brown-Williamson Tobacco Company, Louisville, Kentucky, a like subsidiary, engaged in the manufacture of tobacco products.

Dibrell Brothers, Inc., Danville, Virginia (with foreign offices in Manila, P. I.; Shanghai, China; Antwerp, Belgium; and London, England), which, with approximately thirteen subsidiaries located in Georgia, Kentucky, North Carolina, Tennessee, and Virginia, buys tobacco in the United States for sale therein and in foreign countries.

In addition to these manufacturers and dealers, there are other independent dealers in leaf tobacco and also a large number of speculators who have no established places of business but make small purchases of tobacco on the auction markets either for immediate resale on the same market or for transfer to some other market for sale. It is estimated that in 1934, 13 principal tobacco manufacturers purchased the equivalent of 64 percent of the crop, and the three largest of such manufacturers purchased a quantity equal to 46.2 percent of the crop. These same 13 corporations sold over 97 percent of the cigarettes, over 90 percent of the smoking tobacco, over 75 percent of the chewing tobacco, and over 98 percent of the snuff produced in the United States in 1934. The three companies reporting, respectively, the largest sales of cigarettes, of smoking tobacco, of chewing tobacco, and of snuff, accounted for 80.1 percent, 64.8 percent, 68.7 percent, and 95.3 percent, respectively, of the 1934 production of these products.

## XVII

### Redrying and Storage

Most leaf tobacco is redried and stored before manufacture. When flue-cured tobacco is delivered at the warehouse for sale by the producers, it usually has a moisture content of from 20 to 25 percent. This moisture content tends to prevent breakage in handling. From the warehouses the tobacco is moved promptly to redrying plants. If facilities for redrying are not available in the vicinity of sale, each lot of tobacco purchased is wrapped by the buyer in a burlap sack, or "sheet". The sheets of tobacco are then shipped by rail or truck to the redrying plant of the buyer or his principal. At the redrying plant the tobacco is assorted and blended according to grade and run through a redrying machine. In redrying, practically all of the original moisture is removed and a controlled amount is added to condition the tobacco for packing in hogsheads. The degree of moisture content is varied according to the intended dis-

position of the tobacco. The moisture content of tobacco intended for export is lower than that intended for storage for domestic manufacture. Tobacco packed for export usually contains about 11 percent of moisture, while that packed for domestic trade usually contains from 12 to 14 percent of moisture. However, export moisture content is varied somewhat in accordance with import regulations and practices of different foreign countries. For export to the United Kingdom, the tobacco is packed with a moisture content below that for other countries. The stem is removed from some flue-cured tobacco prior to redrying and packing but most of it is packed in leaf form and the stem is removed at a later date. Of the tobacco exported to foreign countries, only a small percentage is stemmed prior to export.

The redrying of flue-cured tobacco by a buyer usually takes place within a week after purchase from the producer. Redrying plants are owned and operated by most of the dealers and manufacturers. The manufacturing plants, the points of export, and the center of supply are the three principal points of concentration for redrying plants. There are no redrying plants within the States of Alabama and Florida. The flue-cured tobacco sold through the warehouses of Florida is sent by rail or truck to other States for redrying, among which States are Georgia, Kentucky, North Carolina, and Virginia. At the present time there are four or five redrying plants in the State of Georgia with a season capacity for redrying of approximately twenty million pounds of tobacco when operated at 24-hour day capacity. A portion of the market supply produced in Florida is redried in Georgia. The redrying plants are largely owned and operated by exporters. Approximately fifteen million pounds of flue-cured tobacco is redried in Georgia each year, and of this quantity approximately seven million pounds is exported. About eighty percent of the market supply of flue-cured tobacco produced in Georgia is sent out of the State for redrying. Among the States to which such tobacco is sent for redrying are North Carolina, Virginia, and Kentucky. The fifty-seven auction warehouses in Georgia are located in sixteen cities. Redrying plants are located in only three of such cities, namely, Valdosta, Tifton, and Douglas, and a substantial part of the flue-cured tobacco sold through the warehouses in these three cities is sent to other States for redrying.

The tobacco for export trade is packed in hogsheads of a size different from the hogsheads in which tobacco is packed for domestic manufacture. It may not be readily diverted into domestic manufacture. The storage following redrying is for the purpose of aging in preparation for manufacture. The tobacco in storage ferments or sweats. There are thereby eliminated certain acrid characteristics of the tobacco. Most of the leaf is aged from one to five years. The length of time during which the tobacco remains in storage depends entirely upon the manufacturer's needs and upon the nature and characteristics of the supply produced in any one year. The hogsheads of tobacco moving in the domestic trade are usually stored in

the vicinity of the manufacturing plants of the owners of the tobacco. Exporters of flue-cured tobacco do not store their tobacco for any considerable length of time. Foreign manufacturers have their own storage facilities for aging the leaf. The exporters maintain a small reserve supply only sufficient to meet changes in the usual foreign demand. The seasonal movements of flue-cured tobacco into export trade are similar to those of the auction marketing. Exports are at their peak from September through January. Any storage of tobacco for export takes place near the approximate export center.

### XVIII

#### Exports, Manufacture, and Consumption

On an average, 65 percent of the leaf tobacco produced in the United States is made into tobacco products in the United States and 35 percent is exported for foreign manufacture. In the domestic manufacture, 30 percent of the supply is made into cigarettes; 24 percent is used for making smoking and chewing tobacco and snuff; and 11 percent is made into cigars. Flue-cured tobacco constitutes the most important class of tobacco. The average percentage of each class of tobacco exported during the five-year period, 1932-1936, is as follows: flue-cured, 55 percent; Burley, 4 percent; Maryland, 34 percent; dark-air-cured, 30 percent; fire-cured, 66 percent; and cigar leaf, less than one percent. In 1935, 755,546,000 pounds, processing weight, of leaf tobacco were manufactured in the United States and of this quantity 342,727,000 pounds were manufactured into chewing and smoking tobacco and snuff; 97,655,000 pounds into cigars; and 315,164,000 pounds into cigarettes (Table 7).

The fabrication of tobacco products involves an assembly of numerous kinds of tobacco from dispersed producing areas. Tobacco products are usually blends of several kinds of leaf tobacco. Cigarettes are a blend of flue-cured tobacco which is produced in Alabama, Florida, Georgia, North Carolina, South Carolina, and Virginia; Maryland tobacco; Burley Tobacco, which is produced mainly in Kentucky, Tennessee, Indiana, Kansas, Missouri, North Carolina, Ohio, Virginia, and West Virginia; and imported tobacco, commonly referred to as Turkish or Oriental, produced in several countries in southeastern Europe. The tobacco contents of the typical American cigarette are approximately 52 percent flue-cured, 33 percent Burley, 3 percent Maryland, and 12 percent Oriental. The total American output of chewing and smoking tobacco and snuff has the following approximate average leaf components if all of the products are grouped together: flue-cured tobacco, 22 percent; Burley tobacco 42 percent; cigar-leaf tobacco, which is produced mainly in Connecticut, Florida, Georgia, Massachusetts, Minnesota, New York, Ohio, Pennsylvania, and Wisconsin, 15 percent; fire-cured tobacco, which is produced in Kentucky, Tennessee, and Virginia, 12 percent; dark air-cured tobacco, similarly produced, 8 percent; and Maryland tobacco, 1 percent. Cigars in the aggregate contain about 35 percent im-

ported leaf tobacco; any one brand may contain all domestic leaf or a combination of both foreign and domestic leaf.

Approximately two-thirds of the amount of flue-cured tobacco leaf sold at auction moves to points in States other than the State of sale for manufacture.<sup>1</sup> The average annual sales at auction warehouses by producers in the six flue-cured tobacco producing States during the five-year period, 1932-1936, was 631,321,800 pounds. The average annual quantity manufactured in these six States during such period is estimated to be 219,715,000 pounds (Table 5). There was manufactured in the United States outside of these six States an estimated quantity of 61,826,100 pounds of flue-cured tobacco as follows: Kentucky, 30,195,300 pounds; Pennsylvania, 3,598,000 pounds; New Jersey, 7,779,000 pounds; California, 8,307,000 pounds; all other States, 11,946,800 pounds. The average annual quantity exported to foreign countries during such period was 345,690,100 pounds. Florida, Georgia, and South Carolina, with average sales of 1,960,000 pounds, 52,807,800 pounds, and 65,061,200 pounds, respectively, manufactured on the average, only 400 pounds, 200 pounds, and 2,400 pounds, respectively. North Carolina, with average producers' sales of 433,951,400 pounds, manufactured 159,433,400 pounds. Virginia, with average producers' sales of 77,541,400 pounds, manufactured 60,279,200 pounds (Table 5). The 1932-1938 average annual export of 345,690,100 pounds took place through customs districts, not only in Alabama, Florida, Georgia, South Carolina, North Carolina, and Virginia, the only States producing flue-cured tobacco, but also in the customs districts of Vermont, St. Lawrence, Buffalo, New York, Maryland, New Orleans, Galveston, San Antonio, Arizona, Los Angeles, San Francisco, Washington, Dakota, Duluth and Superior, and Michigan. The largest quantity exported from any customs district was 298,698,400 pounds from the Virginia district, while in the State of Virginia producers' sales during such period averaged 77,541,400 pounds. Average annual producers' sales in Florida, Georgia, North Carolina, and South Carolina were 1,960,000 pounds, 52,807,800 pounds, 433,951,400 pounds, and 65,061,200 pounds, respectively, while the exports from the respective customs districts of such States were 10,300 pounds, 8,219,800 pounds, 22,889,500 pounds, and 3,776,500 pounds, respectively (Table 8).

For the same period a substantially similar situation existed with respect to Burley tobacco. The average annual production of such tobacco was 274,798,000 pounds, while the quantity manufactured in the United States was 278,894,600 pounds. California, New York, Pennsylvania, and some other States, with no production therein, manufactured an estimated average annual total of 27,166,000 pounds of Burley. The average farm production in Indiana, Kentucky, Tennessee, and West Virginia, during this period, was 6,656,000 pounds,

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<sup>1</sup> This estimate is a minimum, because, actually, the manufacturing plants in Virginia, North Carolina, and the other States use tobacco purchased over the entire flue-cured tobacco belt.



191,806,000 pounds, 44,858,000 pounds, and 2,310,000 pounds, respectively, while the 1932-1936 average manufacture in such States is estimated to be 86,700 pounds, 32,952,900 pounds, 948,500 pounds and 92,900 pounds, respectively. North Carolina, Missouri, and Virginia, annually producing, on the average, only 5,399,000 pounds, 4,822,000 pounds and 8,540,000 pounds, respectively, annually manufactured, on the average, 132,165,100 pounds, 18,492,100 pounds, and 54,766,200 pounds, respectively. It is estimated, as a minimum, that 77 percent of the Burley leaf enters interstate and foreign commerce. (Table 9.) A preponderant quantity of the kinds of tobacco other than flue-cured and Burley also moves in interstate and foreign commerce. Commerce in fire-cured and dark-air-cured tobacco is similar to commerce in flue-cured and Burley tobacco. In 1935, 272,000 pounds of tobacco were manufactured in Maryland while 27,935,000 pounds were produced in the State. A comparison of cigar-leaf tobacco similar to that shown for flue-cured and Burley tobacco indicates that less than one-third of the total production of cigar-leaf tobacco is manufactured in the States in which the tobacco is produced. From two-thirds to three-fourths of all tobacco manufactured in the United States is purchased on markets in States other than States in which manufacturing occurs.

TABLE 7.—*Leaf Tobacco Used in the Manufacture of Tobacco Products in the United States, 1935*

(Processing weight)

State in which Manufactured	Chewing and Smoking Tobacco and Snuff	Cigars	Cigarettes	Total All Tobacco Products	Percent of U. S. Total
	1,000 Pounds	1,000 Pounds	1,000 Pounds	1,000 Pounds	1,000 Pounds (%)
Alabama		17		17	
Arizona					
Arkansas		8		8	( <sup>1</sup> )
California	192	1,148	7,963	9,303	1.23
Colorado	6	27		33	( <sup>1</sup> )
Connecticut	41	738		779	0.10
Delaware	2,142	5		2,147	0.28
Florida	3	12,920	1	12,924	1.71
Georgia	2	225		227	( <sup>1</sup> )
Idaho		3		3	( <sup>1</sup> )
Illinois	26,948	806		27,754	3.67
Indiana	168	1,754		1,922	0.25
Iowa	167	104		271	( <sup>1</sup> )
Kansas	2	6		8	( <sup>1</sup> )
Kentucky	36,621	128	26,777	63,526	8.41
Louisiana		1,289		1,289	0.17
Maine		48		48	( <sup>1</sup> )
Maryland		272		272	( <sup>1</sup> )
Massachusetts	336	946	25	1,307	0.17
Michigan	8,375	4,886	15	13,276	1.76
Minnesota	57	279		336	( <sup>1</sup> )
Mississippi					
Missouri	35,223	560	32	35,815	4.74
Montana	1	6		7	( <sup>1</sup> )
Nebraska	24	23		47	( <sup>1</sup> )
Nevada		2		2	( <sup>1</sup> )
New Hampshire	1	1,217		1,218	0.16
New Jersey	7,658	10,439	12,052	30,149	3.99
New Mexico					
New York	2,163	5,243	194	7,600	1.01
North Carolina	118,317	629	169,137	288,083	38.13
North Dakota		1		1	( <sup>1</sup> )

<sup>1</sup> Less than 1/10 of one percent.

TABLE 7.—*Leaf Tobacco Used in the Manufacture of Tobacco Products in the United States, 1935—Continued*

State in which Manufactured	Chewing and Smoking Tobacco and Snuff	Cigars	Cigarettes	Total All Tobacco Products	Percent of U. S. Total
	1,000 Pounds	1,000 Pounds	1,000 Pounds	1,000 Pounds	1,000 Pounds
Ohio.....	47,650	4,554		52,204	6.91
Oklahoma.....		1		1	( <sup>1</sup> )
Oregon.....	2	11		13	( <sup>1</sup> )
Pennsylvania.....	5,711	37,605	5,041	48,357	6.40
Rhode Island.....	6	158		164	( <sup>1</sup> )
South Carolina.....	15	3,706		3,721	0.49
South Dakota.....	1	7		8	( <sup>1</sup> )
Tennessee.....	17,813	85		17,898	2.37
Texas.....	55	289		344	( <sup>1</sup> )
Utah.....	1	17		18	( <sup>1</sup> )
Vermont.....		1		1	( <sup>1</sup> )
Virginia.....	25,515	5,029	93,927	124,471	16.47
Washington.....	1	8		9	( <sup>1</sup> )
West Virginia.....	7,353	1,878		9,231	1.22
Wisconsin.....	157	577		734	0.10
Wyoming.....					
United States.....	342,727	97,655	315,164	755,546	100.00

<sup>1</sup> Less than 1/10 of one percent.

Compiled from the Annual Report of the Commissioner of Internal Revenue, Fiscal Year Ended June 30, 1936, U. S. Treasury Department.

TABLE 8.—*Tobacco, Flue-cured: Average Domestic Exports from the United States By Customs Districts and Average Producers' Sales Within Customs Districts for the 5 years, 1932-1936*

Customs District	Average Exports for the 5 years 1932 to 1936		Average Producers' Sales for the 5 years 1932 to 1936 <sup>3</sup>
	Reported Weight <sup>1</sup>	Estimated Farm Sales Weight <sup>2</sup>	
(1)	(2)	(3)	(4)
	1,000 pounds	1,000 pounds	1,000 pounds
Vermont.....	2,850.4	3,363.5	
St. Lawrence.....	3,099.3	3,657.2	
Buffalo.....	527.2	622.1	
New York.....	2,720.3	3,210.0	
Maryland.....	82.3	97.1	
Virginia.....	253,134.2	298,698.4	77,541.4
North Carolina.....	19,397.9	22,889.5	433,951.4
South Carolina.....	3,200.4	3,776.5	65,061.2
Georgia.....	6,965.9	8,219.8	52,807.8
Florida.....	8.7	10.3	1,960.0
Mobile.....	6.7	7.9	
New Orleans.....	46.3	54.6	
Galveston.....	.5	.6	
San Antonio.....	3.2	3.8	
Arizona.....	( <sup>4</sup> )		
Los Angeles.....	119.5	141.0	
San Francisco.....	384.3	453.5	
Washington.....	59.9	70.7	
Dakota.....	2.3	2.7	
Duluth and Superior.....	1.6	1.9	
Michigan.....	346.6	409.0	
Puerto Rico.....	( <sup>4</sup> )		
Parcel Post.....	( <sup>4</sup> )		
Total United States.....	292,957.5	345,690.1	631,321.8

<sup>1</sup> Compiled from reports of the Bureau of Foreign and Domestic Commerce, United States Department of Commerce.

<sup>2</sup> Converted to a farm sales weight by multiplying the reported weight by 1.18.

<sup>3</sup> Compiled from reports of the State Department of Agriculture for the States of Virginia, North Carolina, South Carolina, and Georgia.

<sup>4</sup> Less than 500 pounds.

TABLE 9.—Tobacco, Burley: Average Production, Estimated Average Quantity Used in Domestic Manufacture, and Estimated Average Minimum Quantity to Interstate and Foreign Commerce Before Manufacture for Specified States for the 5 Years, 1932–1936

State (1)	Average Production for the 5 Years, 1932 to 1936 <sup>1</sup> (2)	Estimated Average Quantity Used in Domestic Manufacture for the 5 Years, 1932 to 1936 <sup>2</sup> (3)	Estimated Average Minimum Quantity to Interstate and Foreign Commerce Before Manufacture (Col. 2–Col. 3) (4)
	<i>1,000 pounds</i>	<i>1,000 pounds</i>	<i>1,000 pounds</i>
Indiana.....	6,656.0	86.7	6,569.3
Kansas.....	258.0	1.3	256.7
Kentucky.....	191,806.0	32,952.9	158,853.1
Missouri.....	4,822.0	18,492.1	-----
North Carolina.....	5,399.0	132,165.1	-----
Ohio.....	10,149.0	12,222.9	-----
Tennessee.....	44,858.0	948.5	43,909.5
Virginia.....	8,540.0	54,766.2	-----
West Virginia.....	2,310.0	92.9	2,217.1
All others.....	-----	27,166.0	-----
Total United States.....	274,798.0	278,894.6	211,805.7

<sup>1</sup> Compiled from reports of the Bureau of Agricultural Economics, United States Department of Agriculture.

<sup>2</sup> Estimates computed from data compiled by the Bureau of Internal Revenue, United States Treasury Department.

Leaf tobacco moves extensively into interstate and foreign commerce by railway transport.

In 1937, on Class I railroads throughout the several railway regions of the United States, there originated and terminated on the same railways 355,481 tons of leaf tobacco; originated and delivered to connecting carriers 402,665 tons; received from connecting lines and terminated on line of receipt, 390,350 tons, and received from connecting lines and delivered to other connecting lines 241,324 tons. The total tons originating on Class I railroads in the United States were 758,146, and the total tons terminating on Class I railroads in the United States were 745,831. The number of Class I railroads participating in this movement was as follows: New England region, 9 railroads; Great Lakes region, 14 railroads; Central Eastern region, 15 railroads; Pocahontas region, 4 railroads; Southern region, 23 railroads; Northwestern region, 3 railroads; Central Southeastern region, 10 railroads; Southwestern region, 13 railroads (Table 10).

The facilities of the railroads and other common carriers of the United States, and particularly carriers operating in the tobacco-growing sections of the Southeast, where the bulk of the flue-cured tobacco is produced, have been for many years past, were at the time of the passage and approval of the Agricultural Adjustment Act of 1938, and now are more than ample to move such tobacco freely and without undue delay.

TABLE 10.—Leaf Tobacco, Railroad Shipments—Class I Railroads, From Interstate Commerce Commission Freight Commodity Statistics, 1937

Region	Originating on reporting line		Received from connecting lines	
	Terminated on the line (tons)	Delivered to connecting lines (tons)	Terminated on the line (tons)	Delivered to connecting lines (tons)
New England.....	1,039	6,948	850	7,731
Great Lakes.....	12,996	16,098	35,890	11,074
Central Eastern.....	16,215	19,329	30,929	39,145
Pocahontas.....	49,977	42,551	103,787	26,383
Southern.....	268,649	302,756	213,449	152,678
Northwestern.....	5,988	13,428	457	235
Central Western.....	597	1,403	4,803	2,114
South Western.....	20	152	185	1,964
Total U. S.....	355,481	402,665	390,350	241,324

Total originating, tons..... 758,149  
 Total terminating, tons..... 745,831

## NEW ENGLAND REGION

Railroad	Originating on reporting line		Received from connecting lines	
	Terminated on the line (tons)	Delivered to connecting lines (tons)	Terminated on the line (tons)	Delivered to connecting lines (tons)
Boston & Maine.....		815	67	1,047
Canadian National of New England.....				24
Central Vermont.....		1,326		2,113
Canadian Pacific in Vermont.....				67
International Railway Co. of Maine.....				1,828
Maine Central.....				22
New York, New Haven & Hartford.....	1,016	4,807	783	527
Boston & Albany.....	23			153
New York Connecting Railway.....				1,950
Total.....	1,039	6,948	850	7,731

## GREAT LAKES REGION

Grand Trunk Western.....			478	1,878
Delaware & Hudson.....			183	530
D. L. & W.....		598	2,463	541
Detroit & Toledo Shoreline.....		23		9
Erie.....	49	250	415	737
Lehigh & Hudson.....				1,167
Lehigh Valley.....	36	502	1,639	373
N. Y. Ontario & Western.....		21	11	8
New York Central.....	12,040	7,026	26,747	1,468
Pittsburgh & Lake Erie.....				173
N. Y., Chicago & St. Louis.....			1,121	3,325
Pere Marquette.....	871	4,754	2,105	259
Pittsburgh & W. Va.....				42
Wabash.....		2,924	728	558
Total.....	12,996	16,098	35,890	11,074

## CENTRAL EASTERN REGION

Akron, Canton, and Youngstown.....		29		
Baltimore & Ohio.....	3,049	8,298	7,904	7,404
Staten Island Rapid Tr.....		18		
Chicago & E. Illinois.....			871	144
Chicago & Ill. Midland.....				5,904
Chicago, Indianapolis & Louisville.....		2,208	128	576
Detroit, Toledo & Ironton.....		187	1,111	
Elgin, Joliet & Eastern.....				1,070
Long Island.....			17	
Pennsylvania.....	8,686	5,934	16,262	2,969
Pa.-Reading Seashore.....			306	
Central R. R. of N. J.....	390	40	1,984	10,301
Reading Co.....	4,059	2,601	2,272	9,353
Western Maryland.....	31	14	74	1,396
Wheeling & Lake Erie.....				28
Total.....	16,215	19,329	30,929	39,145

TABLE 10.—Leaf Tobacco, Railroad Shipments—Class I Railroads, From Interstate Commerce Commission Freight Commodity Statistics, 1937—Continued

POCAHONTAS REGION				
Railroad	Originating on reporting line		Received from connecting lines	
	Terminated on the line (tons)	Delivered to connecting lines (tons)	Terminated on the line (tons)	Delivered to connecting lines (tons)
Chesapeake & Ohio.....	27,542	27,008	59,119	6,704
Norfolk & Western.....	22,425	11,518	38,617	11,808
Richmond, Fredericksburg and Potomac.....		3,486	2,652	6,195
Virginian.....	10	529	3,399	1,676
Total.....	49,977	42,551	103,787	26,383
NORTHWESTERN REGION				
Chicago & North Western.....	888	1,708	275	184
Chicago, St. Paul, Minneapolis & Omaha.....		22	46	
Chicago, Milwaukee, St. Paul & Pacific.....	5,100	11,698	136	51
Total.....	5,988	13,428	457	235
SOUTHERN REGION				
Tennessee Central.....	2,019	8,457	536	620
Atlanta & West Point.....				168
Atlanta, Birmingham & Coast.....	577	8,069	247	137
Atlantic Coast Line.....	89,906	65,082	46,511	14,992
Charleston & W. Carolina.....				288
Clinchfield.....		2,387		7,899
Georgia.....				28
Louisville & Nashville.....	52,190	61,005	9,920	1,780
Nashville, Chattanooga and St. Louis.....	1,764	3,977	421	1,223
Western Ry. of Alabama.....				168
Georgia & Florida.....	1,621	16,069	776	1,934
Gulf, Mobile & Northern.....				918
Central of Georgia.....	5	1,173	1,329	2,670
Illinois Central.....	15,526	5,116	4,079	3,272
Mississippi Central.....				40
Norfolk Southern.....	14,042	36,126	19,449	35,143
Seaboard Air Line.....	6,445	12,445	14,786	16,734
Alabama Great Southern.....				3,545
Cincinnati, New Orleans and Texas Pacific.....	1,042	30,538	7,009	41,129
Ga. Southern & Fla.....		2,031	251	1,933
Mobile & Ohio.....			149	143
N. Orleans & Northeastern.....		10	3,516	1,208
Southern.....	83,512	50,271	104,470	16,706
Total.....	268,649	302,756	213,449	152,678
CENTRAL WESTERN REGION				
Atchison, Topeka & Santa Fe.....			524	241
Alton.....	14		25	
Chicago, Burlington and Quincy.....	583	1,391	619	728
Denver and Rio Grande Western.....				730
Chicago, Rock Island and Gulf.....				102
Chicago, Rock Island and Pacific.....				54
Southern Pacific.....		12	3,036	25
Toledo, Peoria & Western.....				210
Union Pacific.....			13	24
Western Pacific.....			586	
Total.....	597	1,403	4,803	2,114
SOUTHWESTERN REGION				
St. Louis—San Francisco.....			12	15
Kansas City Southern.....			10	
Kansas, Oklahoma & Gulf.....				207
Louisiana & Arkansas.....				81
Louisiana, Arkansas & Texas.....				284
Missouri-Kansas-Texas.....	20			161
Gulf Coast Lines and Subsidiaries.....			22	
International Great Northern.....		38		
Missouri Pacific.....		10	101	328
Texas & Pacific.....				242
St. Louis Southwestern Lines.....			40	167
Texas & New Orleans.....		104		424
Texas Mexican.....				55
Total.....	20	152	185	1,964

According to the Census of Manufacturers, there are approximately 900 tobacco factories in the United States. In 1935 the number was approximately 890, of which 746 were cigar factories, 29 cigarette factories, and 115 chewing and smoking tobacco and snuff factories. The aggregate expenditures of these factories in that year for leaf tobacco, excise taxes, containers, fuel, electricity, etc., amounted approximately to \$810,000,000 of which amount the cigarette factories accounted for 79 percent. The factories are classified by the Census according to the product of chief value, and no factory is included which has an annual output valued at less than \$5,000. Cigarettes are manufactured in 11 States, cigars in 44 States, and chewing and smoking tobacco and snuff in 34 States. In 1935 there were 755,546,000 pounds, processing weight, of leaf tobacco manufactured into tobacco products in the United States, of which 342,727,000 pounds were manufactured into chewing and smoking tobacco and snuff; 97,655,000 pounds into cigars, and 315,164,000 pounds into cigarettes. While approximately one-half of the States were engaged in commercial production of leaf tobacco, manufacture took place in forty-four States. The only States in which there was no manufacture were Arizona, Mississippi, New Mexico, and Wyoming. The eight States of Illinois, Kentucky, Missouri, New Jersey, North Carolina, Pennsylvania, Tennessee, and Virginia, accounted for slightly less than 85 percent of the total domestic manufacture, and North Carolina and Virginia accounted for approximately 55 percent of the total manufacture (Table 7).

In the United States in 1935 there were manufactured 139,968,684,406 cigarettes, of which 139,966,179,916 weighed not more than three pounds per thousand, and 2,504,490 weighed more than three pounds per thousand; 4,863,191,852 cigars, of which 4,685,369,178 weighed more than three pounds per thousand; and 177,822,178 weighed not more than three pounds per thousand; and 342,727,000 pounds of chewing and smoking tobacco and snuff. Approximately 98 percent of the tobacco products manufactured in the United States are consumed domestically. Tobacco products of all kinds move extensively from factories to all parts of the United States.

Tobacco products consumed in the United States pass through wholesalers and retailers to consumers. In 1935 there were 21,410 establishments wholesaling tobacco products, consisting of full service and limited function wholesalers; manufacturers' sales branches (with stocks); manufacturers' sales offices (without stocks), and agents and brokers with reported aggregate sales amounting approximately to \$1,110,333,000 (Table 11). In the same year there were 1,028,504 retail outlets for tobacco products consisting of food stores, department stores, filling stations, eating and drinking places, drug stores, and other retail stores (Table 12).

TABLE 11.—Wholesale Trade in Manufactured Tobacco Products in the United States, 1935

Type of Operation and Kind of Business or Trade Group	Establishments	Reported Sales of "Cigars, Cigarettes, and Other Tobacco Products"
	<i>Number</i>	<i>1,000 Dollars</i>
<i>Full Service and Limited Function Wholesalers:</i>		
Beer, wines and liquors.....	5,177	4,087
Drugs (full line).....	201	3,975
Drugs & Sundries (Specialty lines).....	1,169	270
General merchandise.....	135	1,886
Groceries (full line).....	1,786	65,353
Groceries and foods.....	10,726	15,817
Tobacco Products.....	2,022	587,407
<i>Manufacturers' Sales Branches (With Stocks):</i>		
Tobacco products.....	65	404,137
<i>Manufacturers' Sales Offices (Without Stocks):</i>		
Tobacco products.....	121	260,026
<i>Agents and Brokers:</i>		
Tobacco Products.....	8	1,375
U. S. Total.....	21,410	1,110,333

Compiled from Reports of the Bureau of Census, United States Department of Commerce.

TABLE 12.—Retail Outlets for Tobacco Products in the United States, 1935

Kind of Business	Number of Stores
<i>Food Stores:</i>	
Candy and confectionery stores.....	55,197
Delicatessen stores.....	6,554
Grocery stores.....	354,971
Other food stores.....	6,905
General stores (with food).....	66,701
<i>Department Stores.....</i>	4,201
<i>Filling Stations.....</i>	197,568
<i>Eating &amp; Drinking Places:</i>	
Restaurants, cafeterias, lunchrooms.....	113,037
Lunch counters, refreshment stands.....	40,431
Drinking places.....	98,005
<i>Drug Stores:</i>	
Drug stores with fountains.....	38,731
Drug stores without fountains.....	17,966
<i>Other Retail Stores:</i>	
Cigar stores and cigar stands.....	15,350
Hay, grain, & feed stores (with groceries).....	782
Beer and liquor stores (packaged).....	12,105
U. S. total.....	1,028,504

Compiled from reports of the Bureau of Census, United States Department of Commerce.

## XIX

### Commerce and Price

The price of flue-cured tobacco is a very essential element in the marketing of the leaf, and the factors influencing price are world-wide in scope.

The demand for flue-cured tobacco is as widespread as the consumers of those tobacco products having flue-cured leaf as a component part. The marketings of flue-cured tobacco plus the stocks on hand

constitute the supply. Both the demand and the supply of flue-cured leaf are national and international in scope.

When buyers of flue-cured tobacco assemble in any particular warehouse, the price bid is one that has been carefully considered by the buyers on the basis of the best information relative to the demand and supply of flue-cured leaf. Local factors such as quality, distance to points of manufacture or export, and arrangement of the leaf for marketing account for the small price differentials in the various flue-cured markets, but the predominant forces affecting the price in each warehouse are world supply and world demand of flue-cured leaf.

During the marketing season for flue-cured tobacco in 1933, there arose grower protests in respect to auction market prices for such tobacco. These prices were at an extremely low level. The protests first arose in Georgia and then spread to South Carolina and North Carolina. Appeals were made to the Agricultural Adjustment Administration for relief. Mass meetings of growers were held throughout the flue-cured tobacco belt and, pending some action by the Federal Government, the auction markets in South Carolina and North Carolina were closed by official action of the respective Governors of these two States. The marketing in Georgia had been completed and selling in Virginia had not yet commenced, so that the flue-cured tobacco industry was at a complete standstill. Conferences were held among the growers, the buyers, and officials of the Agricultural Adjustment Administration in Washington, D. C., and elsewhere. There was an insistent demand that immediate action be taken by the Federal Government to save the remainder of the 1933 flue-cured tobacco crop from being sacrificed at the prices prevailing at the time of the closing of the markets. As a result, a marketing agreement was entered into between the principal buyers of flue-cured tobacco and the Secretary of Agriculture pursuant to the provisions of Section 8 (2) of the Agricultural Adjustment Act of 1933, and this agreement had a salutary effect upon the prices subsequently received by the growers for the remainder of the 1933 crop of flue-cured tobacco.

## XX

### General Economic Aspects of Tobacco Industry

Consumption of tobacco is relatively stable. The marketing of tobacco by farmers fluctuates widely from season to season. The supply and price of tobacco vary inversely (as the supply increases the price decreases, and vice versa). The price for tobacco marketed in any year affects the marketings of tobacco in succeeding years. As the prices are lower in any year marketings in succeeding years usually are lower, and vice versa. Farm prices are a small portion of the cost of manufactured tobacco products in the United States and of the



tobacco exported to foreign countries. Excise taxes in the United States and import duties and taxes on tobacco exported to foreign countries, together with relatively fixed manufacturing costs make up the larger part of the cost of tobacco products. There is little, if any, relationship between the prices received by farmers for their leaf tobacco and the price paid by the consumer for manufactured tobacco products.

Each farmer offers his tobacco for sale in competition with other farmers who produce the same class of tobacco. Having inadequate knowledge of demand by manufacturers and exporters of tobacco, and being unable to use such knowledge if it were possessed by them, farmers are in no position to plan and adjust their marketings of tobacco in line with demand.

The marketing of an amount of leaf tobacco sufficient to maintain a balance between the supply and consumption thereof has been accompanied by prices to growers that were relatively favorable. Marketings which have resulted in an accumulation of excess stocks have been accompanied by relatively low prices to growers

## XXI

### Importance of Flue-Cured Tobacco Industry

Of the estimated 750,000 farm families engaged in the production of tobacco in the United States in 1937, about 300,000 were engaged in the production of flue-cured tobacco. These 300,000 families took part in the production of tobacco on about 166,000 farms in 1937. The number of flue-cured tobacco farms increased to about 190,000 in 1938, and with this increase in the number of farms there was also an increase in the number of families engaged in the production of flue-cured tobacco.

Flue-cured tobacco is by far the most important class of tobacco grown in the United States. In 1937 flue-cured tobacco represented 55 percent of the total tobacco marketed by producers and 60 percent of the farm value of all tobacco marketed by producers in the United States.

## XXII

### Supplies

A normal supply of flue-cured tobacco is equal to the sum of the following two items: (1) 275 percent of a normal year's domestic consumption and (2) 165 percent of a normal year's exports. The reserve supply level as defined in the act is 105 percent of the normal supply. Comparison of the actual supply with this reserve supply level gives a basis for analysis of the effect of variations in supply from the reserve supply level (Table 13).

During nine of the eighteen years 1920 to 1937 the actual supply was less than, or not more than 4 percent in excess of, the computed reserve supply level. During the other nine years the actual supply was more than 4 percent in excess of the computed reserve supply level. The average of the seasonal price for the nine years first mentioned was 19 percent higher than the average of seasonal prices for the other nine years (Table 13 (a)). The highest prices were obtained in years when the actual supply was less than the computed reserve supply level, as in 1922, when the actual supply was five percent less than the reserve supply level and the price was 27.2 cents per pound. In years when the actual supply was more than 4 percent in excess of the computed reserve supply level prices were low, as in 1930, when the actual supply was 12 percent above the computed reserve supply level and the price was 12 cents per pound, and in 1931, when the actual supply was 16 percent above the computed reserve supply level and the price was 8.4 cents per pound (Table 13 (a)).

From 1920 to 1926 incl. the supply fluctuated slightly above and below the computed reserve supply level. The actual supply which was available from 1927 to 1931 incl. was in excess of the computed reserve supply level. The excess was 89,000,000 pounds in 1927, 101,000,000 pounds in 1928, 82,000,000 pounds in 1929, 164,000,000 pounds in 1930, and 198,000,000 pounds in 1931 (Table 13 (a), Chart I).

In 1930, 1931, and 1932 large quantities of tobacco which ordinarily would have been purchased readily could not be sold by farmers at any price. Tobacco was offered for sale with no bid whatsoever or with a bid so low that it meant practically no return to the farmer. Many farmers retained on the farm tobacco which ordinarily would have been marketed. This tobacco was generally scattered over the land for its fertilizer value. A survey conducted in Virginia indicated that growers of flue-cured tobacco and fire-cured tobacco were unable to market from 8 to 15 percent of their 1931 and 1932 crops. A similar situation existed in the marketing of the 1932 Burley tobacco crop.

TABLE 13.—*Flue-cured Tobacco: Actual Supply and Reserve Supply Level, 1920-1937*

Year	Actual supply	Reserve supply level	Actual supply as percentage of reserve supply	Year	Actual supply	Reserve supply level	Actual supply as percentage of reserve supply
	(Million pounds)	(Million pounds)	(Percent)		(Million pounds)	(Million pounds)	(Percent)
1920.....	969	910	106	1931.....	1,464	1,266	116
1921.....	917	883	104	1932.....	1,241	1,286	97
1922.....	929	979	95	1933.....	1,409	1,387	102
1923.....	1,088	1,008	108	1934.....	1,320	1,347	98
1924.....	983	974	101	1935.....	1,564	1,469	106
1925.....	1,102	1,108	99	1936.....	1,554	1,497	104
1926.....	1,084	1,102	98	1937.....	1,738	1,603	108
1927.....	1,258	1,169	108	Average, 1920-37.....	1,279	1,225	104
1928.....	1,397	1,296	108				
1929.....	1,439	1,357	106				
1930.....	1,569	1,405	112				

TABLE 13 (a).—*Comparison of Actual Supply and Reserve Supply Level, Flue-Cured Tobacco, 1920-1937*

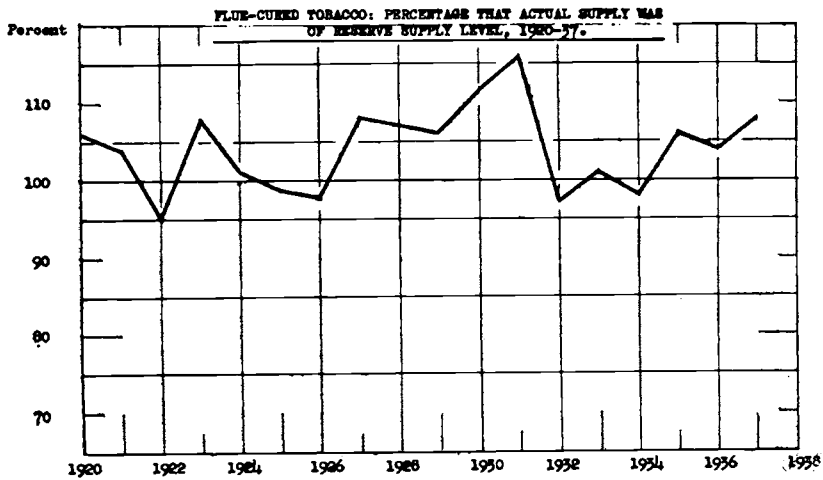
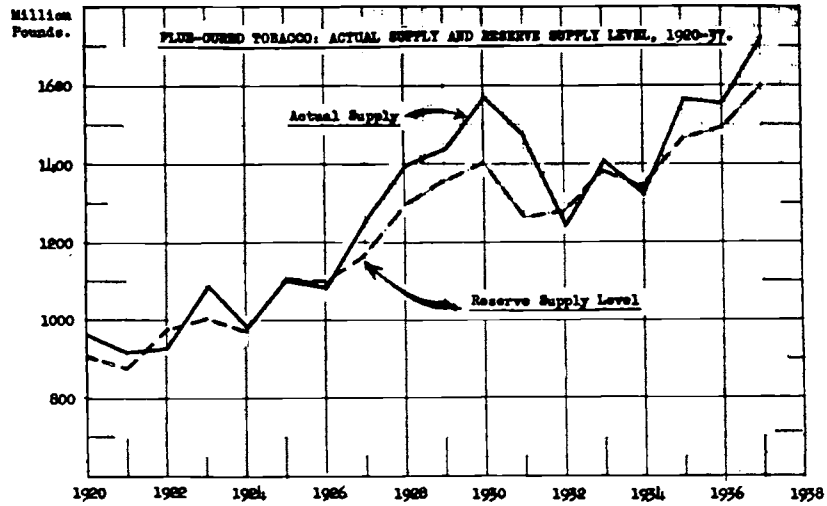
Year	Actual supply	Reserve supply level	Difference col. 1-2	Percent (col. 3-col. 2)	See footnote <sup>1</sup>	See footnote <sup>2</sup>
	(1)	(2)	(3)	(4)	(5)	(6)
	Million pounds	Million pounds	Million pounds	Percent	Cents	Cents
1920.....	969	910	59	6	-----	21.5
1921.....	917	883	34	4	21.9	-----
1922.....	929	979	-50	-5	27.2	-----
1923.....	1,088	1,008	80	8	-----	20.8
1924.....	983	974	9	1	21.6	-----
1925.....	1,102	1,108	-6	-1	20.0	-----
1926.....	1,084	1,102	-18	-2	24.9	-----
1927.....	1,258	1,169	89	8	-----	20.5
1928.....	1,397	1,296	101	8	-----	17.3
1929.....	1,439	1,357	82	6	-----	18.0
1930.....	1,569	1,405	164	12	-----	12.0
1931.....	1,464	1,266	198	16	-----	8.4
1932.....	1,241	1,286	-45	-3	11.6	-----
1933.....	1,409	1,387	22	2	15.3	-----
1934.....	1,320	1,347	-27	-2	27.3	-----
1935.....	1,564	1,469	95	6	-----	20.0
1936.....	1,554	1,497	57	4	22.2	-----
1937.....	1,738	1,603	135	8	-----	23.0
Average.....	1,279	1,225	54	4	21.3	17.9

<sup>1</sup> In this column are prices in years when actual supply was less than 19 percent, or not more than 4 percent in excess of, reserve supply level.

<sup>2</sup> In this column are prices in years when actual supply was more than 4 percent in excess of reserve supply level.

Percentage that average of prices in years when actual supply was less than, or not more than 4 percent in excess of, reserve supply level was above the average of prices in years when actual supply was more than 4 percent in excess of the reserve supply level.

CHART I.



## XXIII

## Prices

The price of flue-cured tobacco reacts to changes in the supply. During the period 1920 to 1937 the changes in the supply were associated with changes in the price. With the exception of one year (1922), the price has decreased relative to the previous year when the supply increased relative to the previous year. Without exception the price has increased relative to the previous year when the supply decreased relative to the previous year (Table 14, Chart II).

A comparison of actual prices for flue-cured tobacco during the period 1920 to 1937 with parity prices (namely, those prices which would have given a pound of tobacco the same purchasing power for commodities farmers buy as that which prevailed from August 1919 to July 1928), indicates the years in which prices for flue-cured tobacco were relatively high or low. In years when the actual supply was greater than the reserve supply level the price of flue-cured tobacco was lower relative to the parity price. In 1930 the actual supply was 12 percent above a reserve supply level. The purchasing power of a pound of flue-cured tobacco was 59 percent of the average purchasing power existing during 1919-1929. The actual price was 49 percent of the parity price in 1931, with an actual supply 16 percent above the reserve supply level. In years when the actual supply was less than the reserve supply level, prices of flue-cured tobacco were higher relative to parity prices. The actual supply was five percent less than the reserve supply level in 1922. The actual price was 119 percent of the parity price. In 1926, with an actual supply two percent less than normal, actual price was 108 percent of the parity price (Tables 13a and 15, Charts III and IV).

An accumulation of excessive supplies from 1927 to 1933 was accompanied by sharply decreased prices. By 1931 the flue-cured tobacco price was only 49 percent of the parity price. The price in 1932 was 38 percent higher than that in 1931, although it was 25 percent below the parity price (Tables 15 and 16, Charts III and IV).

The price in 1933 was influenced by the marketing agreement which became operative after the markets in North and South Carolina had been closed following grower protests because of low prices. Prior to the closing of the markets the prices were reported as being lower than in 1932, when the season average price was 11.6 cents per pound. The marketing agreement established a minimum of 17 cents and the average for the season including sales prior to the agreement was 15.3 cents, an increase of 32 percent above the price in 1932.

The price of flue-cured tobacco increased to 27.3 cents in 1934. Prices during the period 1934 to 1937 were at a level favorable to the growers. These prices were influenced by the operation and prospective operation of governmental programs regulating the production or marketing of tobacco.

TABLE 14.—*Flue-Cured Tobacco: Relationship Between Changes in Supply and Price, 1920-1937*

Year	Supply of flue-cured tobacco	Percent of previous year's supply	Average season price per pound	Percent of previous year's price
	<i>Million pounds</i>		<i>Cents</i>	
1919.....	856		44.4	
1920.....	969	113.2	21.5	48.4
1921.....	917	94.6	21.9	101.9
1922.....	929	101.3	27.2	124.2
1923.....	1,088	117.1	20.8	76.5
1924.....	983	90.3	21.6	103.8
1925.....	1,102	112.1	20.0	92.6
1926.....	1,084	98.3	24.9	124.5
1927.....	1,258	116.1	20.5	82.3
1928.....	1,397	111.0	17.3	84.3
1929.....	1,439	103.0	18.0	104.0
1930.....	1,569	109.0	12.0	66.7
1931.....	1,464	93.3	8.4	70.0
1932.....	1,241	84.8	11.6	138.1
1933.....	1,409	113.5	15.3	131.9
1934.....	1,320	93.6	27.3	178.4
1935.....	1,564	118.5	20.0	73.3
1936.....	1,554	99.4	22.2	111.0
1937.....	1,738	111.8	23.0	103.6

TABLE 15.—*Flue-Cured Tobacco: Actual Price and Computed Price<sup>1</sup> Per Pound, 1920-1937*

Year	Actual price	Computed price <sup>1</sup>	Actual price as percentage of computed price	Year	Actual price	Computed price <sup>1</sup>	Actual price as percentage of computed price
	<i>(Cents)</i>	<i>(Cents)</i>	<i>(Percent)</i>		<i>(Cents)</i>	<i>(Cents)</i>	<i>(Percent)</i>
1920.....	21.5	25.2	85	1929.....	18.0	22.6	80
1921.....	21.9	22.2	99	1930.....	12.0	20.2	59
1922.....	27.2	22.8	119	1931.....	8.4	17.2	49
1923.....	20.8	22.6	92	1932.....	11.6	15.4	75
1924.....	21.6	23.2	93	1933.....	15.3	17.7	86
1925.....	20.0	23.4	85	1934.....	27.3	18.9	144
1926.....	24.9	23.1	108	1935.....	20.0	18.3	109
1927.....	20.5	23.1	89	1936.....	22.2	19.5	114
1928.....	17.3	23.1	75	1937.....	23.0	18.9	122

<sup>1</sup> Computed price—the season average price that would have given flue-cured tobacco the same purchasing power with respect to items farmers buy as existed during the period August 1919 to July 1929.

TABLE 16.—*Flue-Cured Tobacco: Percentage Deviations of Actual Supply From the Reserve Supply Level and Percentage Deviations of Actual Price From Computed Price<sup>1</sup>*

Year	Percentage deviations of actual supply from reserve supply level	Percentage deviations of actual price from computed price <sup>1</sup>	Year	Percentage deviations of actual supply from reserve supply level	Percentage deviations of actual price from computed price <sup>1</sup>
1920.....	6	-15	1929.....	6	-20
1921.....	4	-1	1930.....	12	-41
1922.....	-5	19	1931.....	16	-51
1923.....	8	-8	1932.....	-3	-25
1924.....	1	-7	1933.....	2	-14
1925.....	-1	-15	1934.....	-2	44
1926.....	-2	8	1935.....	6	9
1927.....	8	-11	1936.....	4	14
1928.....	8	-25	1937.....	8	22

<sup>1</sup> Computed price—the season average price that would have given flue-cured tobacco the same purchasing power with respect to items farmers buy as existed during the period August 1919 to July 1929.

CHART II.

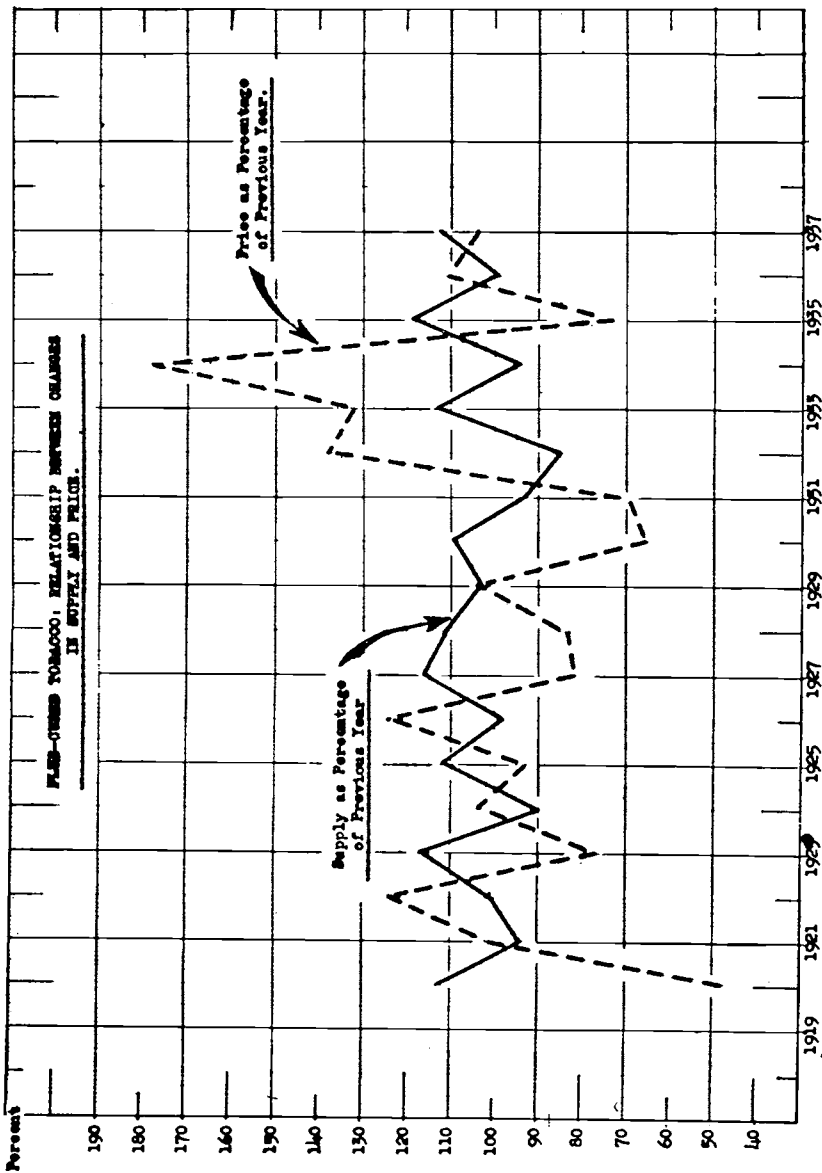
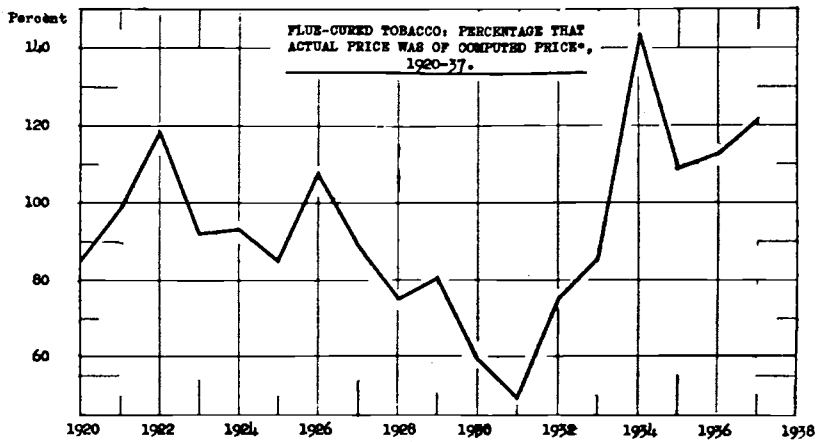
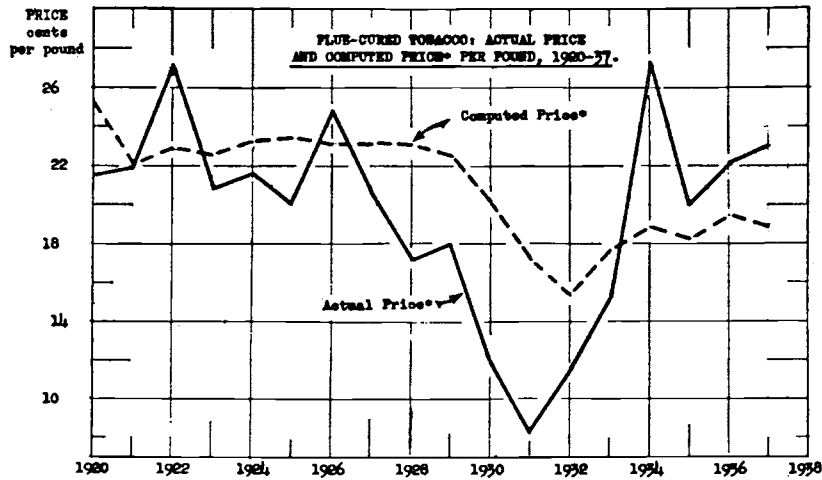


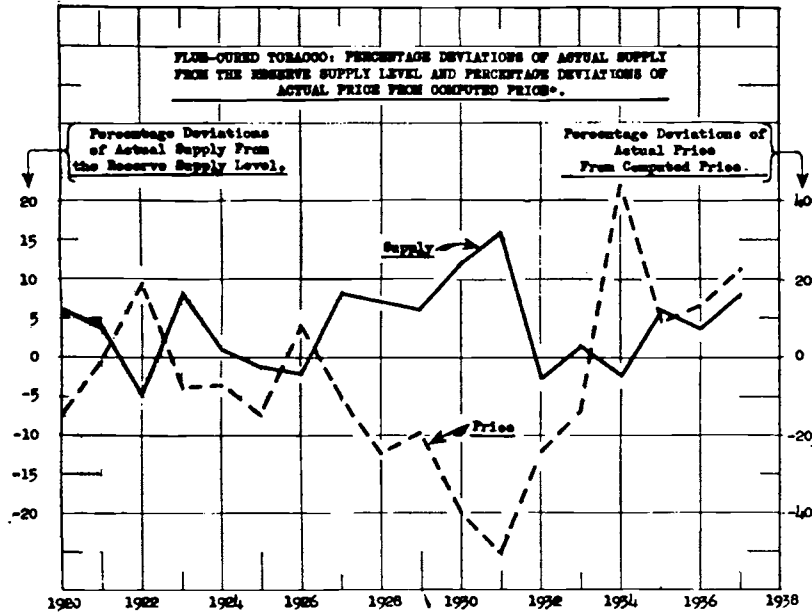
CHART III.



\* Computed price - the season average price that would have given fine-cured tobacco the same purchasing power with respect to items farmers buy as existed during the period August, 1919 to July, 1929.



CHART IV.



\* Computed price - the season average price that would have given flue-cured tobacco the same purchasing power with respect to items farmers buy as existed during the period August, 1919 to July, 1929.

## XXIV

## Farm Value

In 1927 the farm value of flue-cured tobacco was \$147,300,000. In 1932 the farm value was \$43,400,000. From 1927 to 1930 the total number of pounds marketed steadily increased from year to year. This continuous increase in marketing, together with an accumulated excess quantity of flue-cured stocks, brought about a decrease in the price and farm value. In 1927, the production of 718,800,000 pounds had a farm value of \$147,300,000, whereas 865,200,000 pounds brought a farm value of only \$103,400,000 in 1930.

By 1931 many farmers curtailed their marketings of flue-cured tobacco, and the total marketings dropped to 669,500,000 pounds. But with the accumulated excess supply from previous years, prices again were low—averaging 8.4 cents per pound with a farm value of \$56,400,000. In 1932 an extremely unfavorable growing season coupled with a further curtailment of marketings by farmers, resulted in total marketings for the year of only 373,705,000 pounds. The resulting total supply was about in line with the reserve supply level. The prices increased about a third over the previous year—from 8.4 cents to 11.6 cents—but the farm value was only \$43,400,000.

Beginning in 1933 the situation with respect to farm value of flue-cured tobacco has been affected by the operation or prospective operation of governmental programs designed to regulate either production or marketing of tobacco, or both. In 1933 the farm value of the 733,379,000 pounds marketed that year was \$112,145,000 as compared with a value of about \$82,000,000, indicated by the average price of 11.2 cents per pound for that portion marketed prior to the execution of a marketing agreement under section 8 (2) of the Agricultural Adjustment Act of 1933. For the four years 1934 to 1937 the farm value averaged approximately \$165,558,000. This value was the result of an average annual marketing of 726,426,750 pounds and an average price per pound of 22.8 cents.

Available data indicate that the average price of flue-cured tobacco from 1933 to 1937, would have been less than 15.2 cents per pound as compared with the actual average of 21.3 cents had there been no governmental program in effect or in prospect to regulate production or marketing of such tobacco during such period. A price of 15.2 cents, with the average production of 727,817,000 pounds, would have resulted in an average farm value of \$111,000,000 as contrasted with the actual average value of \$155,000,000.

*Average Marketings, Price, and Consumption of Flue-Cured Tobacco, and Percent Which Flue-Cured Tobacco Price Was of Cotton Price*

	5-year Period 1927-31	5-year Period 1933-37
Average Marketings (pounds).....	748,521,000	727,817,000
Average price per pound.....	15.2	21.3
Average world consumption of U. S.....	682,000,000	662,000,000
Average tobacco price as percent of cotton price flue-cured tobacco.....	115	200

With an average price of 15.2 cents per pound during the five-year period 1927 to 1931 the average marketings amounted to 748,521,000 pounds, the average world consumption was 682,000,000 and the average tobacco price was 115 percent of the average cotton price. In the five-year period 1933-37 with an average price of 21.3 cents per pound the average marketings were 727,817,000 pounds with world consumption of 662,000,000 pounds and an average tobacco price equal to 200 percent of the average cotton price.

The average marketings from 1933 to 1937 were approximately 21 million pounds less than during the period 1927 to 1931. At the same time the price per pound during later period was 21.3 cents as contrasted with a price of 15.2 cents in the earlier period. World consumption in the later period was approximately 20 million pounds less than during the earlier period. The average tobacco price during the later period was 200 percent of the average cotton price as contrasted with 115 percent in the earlier period.

### Farmers' Share of Receipts from Sale of Tobacco Products

The money received by farmers for tobacco is only a small part of the money paid for tobacco products by the consumer. The retailers and wholesalers of tobacco products receive pay for their services. If the tobacco product is sold in a State that levies a tax on the product, either the retailer or the wholesaler pays this tax from the amount that the consumer pays. From the amount left the manufacturer pays out about one-half for the excise tax on tobacco products. He also pays for distribution, for manufacturing, for storing the leaf, for the tobacco leaf, and the balance is profit.

In years when the supply was normal, farmers received (including income from the portion of the crop exported) approximately one-fourth of the total amount received by domestic manufacturers from the sale of tobacco products. The farm income from tobacco was about two-thirds as much as the excise taxes on tobacco products and about twice the manufacturers' profits. In years when the supply was relatively large, the farmers received a smaller proportion of the total. In 1931 and 1932 the farm value of tobacco was less than a third of the excise taxes and less than the manufacturer's profits.

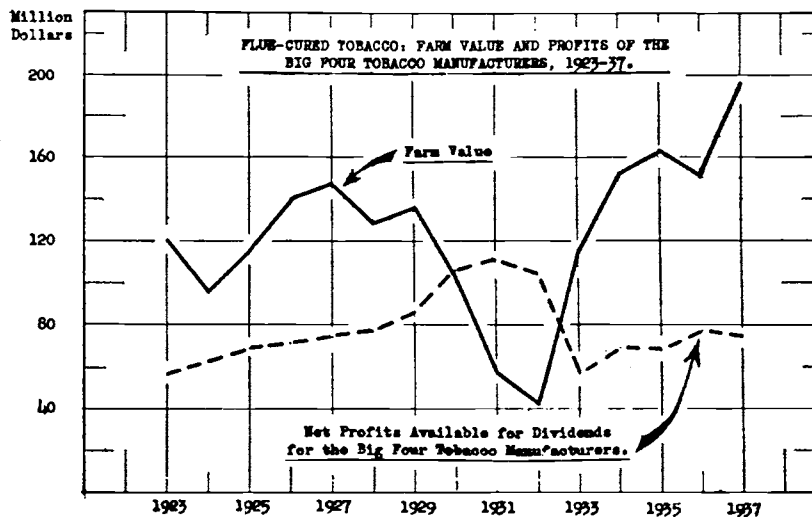
From 1923 to 1927, a period when the actual supply was approximately equal to the reserve supply level, the farm value of flue-cured tobacco was approximately twice the profits of those manufacturers who use 85-90 percent of the flue-cured tobacco that enters domestic consumption. In 1931 and 1932 the farm value of flue-cured tobacco was less than half the profits of such manufacturers (Table 17, Chart V).

TABLE 17.—*Flue-cured Tobacco: Farm Value and Profits of the "Big Four"*<sup>1</sup>  
*Tobacco Manufacturers, 1923-1937*

Year	Farm value	Profits available for dividends of "Big Four" tobacco manufacturers	Year	Farm value	Profits available for dividends of "Big Four" tobacco manufacturers
	(Million dollars)	(Million dollars)		(Million dollars)	(Million dollars)
1923.....	121	56	1931.....	56	110.6
1924.....	94	61.7	1932.....	43	104.6
1925.....	115	68.4	1933.....	112	57.7
1926.....	140	70.5	1934.....	152	68.5
1927.....	147	73.6	1935.....	162	68.1
1928.....	128	76.4	1936.....	152	77.2
1929.....	135	85.7	1937.....	197	77.5
1930.....	103	105.2			

<sup>1</sup> "Big Four" tobacco manufacturers used 85-90 percent of the flue-cured tobacco manufactured in the United States.

CHART. V.



XXVI

### Purchase of Industrial Goods by Farmers

Purchases of industrial goods in farming areas are dependent upon the maintenance of a relationship between prices for farm products and prices for industrial goods which will permit continuous trade as between farming and industrial areas. In years of low farm income purchases of industrial goods in rural areas have also been low.

In 1926, when the total cash income of farmers was \$9,658,000,000, they spent approximately \$2,867,000,000 for goods used in production and \$4,478,000,000 for goods for living. In 1932, when the cash income of farmers was reduced to \$4,201,000,000, farmers reduced their expenditures for goods for use in production to \$1,351,000,000 and their expenditure for consumers' goods to \$1,302,000,000.

The increase of purchases of industrial goods by farmers, with improvement in their income, from 1932 to 1933 and 1934 is indicated by the extent to which carloadings destined from industrial areas for the southeastern agricultural area increased. Total shipments of manufactured commodities from industrial areas into the southeastern region over four important railroads showed a gain of 38.8 percent in the year beginning July 1, 1933, and 97.8 percent in the year beginning July 1, 1934, compared to the year beginning July 1, 1932 (Table 18). The percentage increase was greatest in 1934-35 in the case of domestic and personal goods, the increase being 141.9 percent.

Tobacco farmers purchase smaller amounts of industrial goods, when the purchasing power of tobacco is low. The registration of new automobiles in the six important tobacco producing States of Virginia, North Carolina, South Carolina, Georgia, Kentucky, and Tennessee and the farm income in these states showed a close rela-

tionship. Farm income in these states was 62 percent less and registration of new cars was 67 percent less in the year beginning July 1932, than in the year beginning July 1928 (Table 19).

The number of voluntary sales of farms during the period of declining farm income from 1928 to 1931 decreased and the number of farms changing ownership on the basis of delinquent tax sales, foreclosures of mortgages and bankruptcies increased. The number of farms changing ownership in Georgia in 1932 on the basis of delinquent tax sales was two and one-half times as high as the number of farms that changed ownership on the same basis in 1929. The delinquent tax sales were even higher in some of the other principal tobacco producing States. The number of farms changing ownership by delinquent tax sales in Tennessee and Virginia was approximately six times as high in 1932 as in 1929 (Table 20). The number of farms changing ownership by foreclosures of mortgages and bankruptcy increased 89 percent in Georgia and 289 percent in Tennessee from 1929 to 1932.

As farm income increased, after the low period from 1930 to 1932, the number of farms changing ownership on the basis of delinquent tax sales, foreclosures of mortgages, and bankruptcies decreased. By 1935 the number of farms changing ownership in Georgia because of delinquent tax sales, foreclosures of mortgages, and bankruptcies was approximately one-third of the number in 1932.

The number of bank suspensions and the tobacco farm value in Kentucky, Tennessee, Georgia, North Carolina, and South Carolina between the period 1922-1936 is shown on Table 21. During the period 1930-1933, when farm values were at their lowest, bank suspensions in these states were at their highest. For instance, in 1929, the farm value of tobacco was \$215,500,000 and bank suspensions numbered 62, while in 1931 the tobacco farm value was \$99,800,000 with bank suspensions numbering 192.

TABLE 18.—Total Shipments, by Groups of Commodities

Group	YEAR 1	YEAR 2	YEAR 3
	(July 1, 1932, to June 30, 1933)	(July 1, 1933, to June 30, 1934)	(July 1, 1934, to June 30, 1935)
	<i>Pounds</i>	<i>Pounds</i>	<i>Pounds</i>
Agricultural.....	56,473,000	99,278,000	136,480,000
Domestic and personal.....	115,653,000	182,309,000	279,778,000
Industrial and commercial.....	821,431,000	1,179,189,000	1,604,107,000
General.....	1,100,499,000	1,445,052,000	2,121,363,000
Total.....	2,094,056,000	2,905,828,000	4,141,728,000

## Increase in Total Shipments, by Groups of Commodities

Group	Year 2 over Year 1	Year 3 over Year 2	Year 3 over Year 1
	Percent	Percent	Percent
Agricultural.....	75.8	37.5	141.7
Domestic and personal.....	57.6	53.5	141.9
Industrial and commercial.....	43.6	36.0	95.3
General.....	31.3	46.8	92.8
Total.....	38.8	42.5	97.8

TABLE 19.—Farm Cash Income<sup>1</sup> and Registrations of New Motor Cars<sup>2</sup> in Principal Tobacco Producing States

[Income in millions of dollars; registration in thousands]

	1928-29	1929-30	1930-31	1931-32	1932-33	1933-34	1934-35	1935-36
<b>Virginia:</b>								
Farm Income.....	146	156	104	83	62	78	91	106
Registrations.....	65	68	46	32	22	34	50	61
<b>North Carolina:</b>								
Farm Income.....	279	231	177	116	98	171	219	217
Registrations.....	74	56	36	26	22	48	65	66
<b>South Carolina:</b>								
Farm Income.....	117	121	97	61	48	70	82	91
Registrations.....	34	30	19	11	10	23	27	29
<b>Georgia:</b>								
Farm Income.....	193	207	156	90	64	103	120	134
Registrations.....	43	40	31	21	19	39	47	55
<b>Kentucky:</b>								
Farm Income.....	175	172	118	91	74	81	95	107
Registrations.....	56	52	32	22	19	31	39	50
<b>Tennessee:</b>								
Farm Income.....	161	161	109	85	67	85	95	102
Registrations.....	55	55	31	19	16	30	44	52
<b>Total Six States:</b>								
Farm Income.....	1,071	1,048	761	526	410	588	702	757
Registrations.....	327	281	195	131	108	205	272	313

<sup>1</sup> Farm cash income covers crop year for crops and calendar year for livestock and livestock products. Rental and benefit payments made under Agricultural Adjustment Administration not included. Source: Bureau of Agricultural Economics.

<sup>2</sup> Registrations of new passenger cars and new commercial cars covering the period July-June. Source: R. L. Folk & Co., Detroit, Michigan.

TABLE 20.—Number of Farms Changing Ownership by Various Methods

[Number per 1,000 farms]

	Virginia	North Carolina	Georgia	Kentucky	Tennessee	United States
<b>Voluntary sales and trades<sup>1</sup>—12 months, beginning March 16:</b>						
1929.....	16.3	19.1	17.5	30.0	18.5	23.7
1930.....	13.7	16.5	10.9	27.2	16.7	19.0
1931.....	9.8	11.0	10.6	19.0	18.0	16.2
1932.....	14.6	13.5	16.2	21.0	19.5	16.8
1933.....	12.6	19.0	18.8	20.1	20.0	17.8
1934.....	16.8	20.0	18.6	23.4	23.5	19.4
1935.....	20.6	25.4	21.7	28.9	28.7	24.0
<b>Delinquent tax sales—12 months, beginning March 16:</b>						
1929.....	2.6	10.8	5.5	6.4	2.3	5.1
1930.....	6.7	22.3	5.9	10.3	3.6	7.4
1931.....	9.5	35.6	10.0	21.9	10.1	13.3
1932.....	15.3	45.8	13.7	17.0	14.5	15.3
1933.....	13.6	25.1	11.9	10.1	8.4	11.1
1934.....	5.1	17.3	6.5	6.9	5.6	7.3
1935.....	3.8	10.7	4.0	5.5	4.1	5.9
<b>Foreclosure of mortgages, bankruptcy, etc.<sup>2</sup>—12 months, beginning March 16:</b>						
1929.....	10.4	15.0	18.5	12.6	8.8	15.7
1930.....	15.2	20.0	27.4	12.1	10.9	18.7
1931.....	29.3	32.6	26.8	17.9	23.0	28.4
1932.....	28.0	40.8	34.9	31.0	34.2	38.8
1933.....	19.6	29.6	24.3	16.1	24.2	28.0
1934.....	14.6	15.0	11.8	14.9	16.7	21.0
1935.....	15.1	15.2	12.5	15.8	14.3	20.3

<sup>1</sup> Including contracts to purchase (but not options).

<sup>2</sup> Including loss of title by default of contract, sales to avoid foreclosure, and surrender of title or other transfers to avoid foreclosure.

TABLE 21.—*Number of Bank Suspensions; Farm Value of Tobacco: Kentucky, Tennessee, Virginia, North Carolina, and South Carolina, 1922-1936*

Year	Number of Bank Suspensions	Farm Value of tobacco	Year	Number of Bank Suspensions	Farm Value of tobacco
1922.....	28	\$232,200,000	1930.....	189	162,200,000
1923.....	51	222,200,000	1931.....	192	99,800,000
1924.....	49	181,600,000	1932.....	124	86,400,000
1925.....	74	179,300,000	1933.....	224	156,700,000
1926.....	79	183,900,000	1934.....	4	198,500,000
1927.....	68	197,600,000	1935.....	3	200,300,000
1928.....	48	215,300,000	1936.....	6	203,300,000
1929.....	62	215,500,000			

## XXVII

**Producer Marketing Cooperatives**

Numerous attempts have been made during the past three hundred years to regulate the marketing of tobacco by marketing all or the major part of the tobacco crop through cooperative associations. Although tobacco cooperatives have been able to perform valuable services for farmers such as the operation of warehouses, redrying plants, and supply stores, their efforts to regulate marketing have been disappointing. As a result, associations that were valuable for some of the services which they performed lost the support of the farmers. The one main objective, regulation of marketing, overshadowed all others in importance. When a cooperative failed to regulate marketings of tobacco it had failed utterly and completely in the minds of many of the farmers.

In 1873 growers in Kentucky established warehouses for the purpose of storing tobacco in years of excess in an attempt to adjust marketing to demand. The benefits accruing were shared by all of the tobacco farmers while a few bore all of the costs of the project. The unfairness of the situation caused the failure of this attempt as it has many since that time. The Planters' Protective Association and the Burley Tobacco Society were organized in Kentucky and Tennessee in 1905 and 1906. These organizations were very active in 1906 and 1907. The unfairness of members of these associations bearing the costs of attempting to regulate the marketings caused such intense feeling that bands of "night riders" were organized. These riders burned tobacco barns and destroyed crops of farmers who would not support the organization.

Several tobacco cooperative associations were formed in 1920 to 1922. The larger and better known of these were:

- Tri-State Tobacco Growers Cooperative Association.
- Burley Tobacco Growers Cooperative Association.
- Dark Tobacco Growers Cooperative Association.
- Connecticut Valley Tobacco Association.
- Maryland Tobacco Growers Cooperative Association.
- Northern Wisconsin Cooperative Tobacco Pool.

*The Tri-State Tobacco Cooperative Association* was organized in 1920. Editors of farm and daily newspapers, doctors, lawyers, bankers, and others who understood the economic situation of the tobacco grower and its consequent effect on the prosperity of the area gave their assistance in starting the organization. The association attempted to secure delivery of over half of the flue-cured, dark-fired, and Virginia sun-cured types of tobacco grown in Virginia, North Carolina, and South Carolina. This association operated for four years and received from members approximately 531,000,000 pounds of tobacco valued in excess of \$100,000,000. Instead of handling more than 50 percent of the tobacco produced in the three States, it received 35 percent in 1922, 28.5 percent in 1923, 22.9 percent in 1924, and 14.6 percent in 1925. In June 1926, the court appointed receivers for the association.

*The Burley Tobacco Growers Cooperative Association* was organized in 1920. It established its own warehouses which were operated by subsidiary corporations. The cooperative operated redrying equipment and had storage capacity for approximately 225,000 hogsheads of tobacco. The association has not received tobacco from members since handling the 1926 crop with which the original marketing contract expired. The Burley Tobacco Growers Cooperative Association of Lexington, Kentucky, still exists in corporate form, owns some property, and maintains an office. Directors of the association meet occasionally and it is possible that the association may some day perform some of the marketing services for tobacco planters.

*The Dark Tobacco Growers Cooperative Association* was organized in Kentucky in 1922. It operated much in the same manner as the Burley Association and ceased operation at the expiration of the member contracts after delivery of the 1926 crop.

*The Connecticut Valley Tobacco Association* was organized in 1922. This association controlled more than two-thirds of the production in the Connecticut valley in 1922 and it was anticipated that marketing could be regulated successfully; however, at the expiration of the first contract the number of growers who had supported the association was so small that it was deemed inadvisable to continue operation. This association performed all the functions of grading, sorting, storing, and preparation of the tobacco for the manufacturer.

*The Maryland Tobacco Growers Cooperative Association* was organized in 1920 and has been in business continually since that date. Its marketing agreement is an agency contract revocable in any year by either party. The State aids this association by furnishing office space, heat, light, etc., without cost. Free storage of tobacco is provided by the State to growers and buyers for a period of six months. This association does not regulate the marketing of tobacco. During recent months when the association was selling the 1937 tobacco, meet-



ings were held by Maryland tobacco growers to protest the low tobacco prices.

*The Northern Wisconsin Cooperative Tobacco Pool* which was organized in 1922 has been operating since that date. It grades and stores the tobacco and pools similar grades so as to be able to offer large quantities of the same grade to buyers.

*The South Carolina Tobacco Growers' Marketing Association* was organized in the spring of 1930. During the first year it handled about 17,000,000 pounds of flue-cured tobacco which it attempted to sell privately. The members voted to suspend delivery, September 1931.

*The Eastern Dark-Fired Tobacco Growers Marketing Association*, *The Western Dark-Fired Tobacco Growers Marketing Association*, and the *Stemming District Tobacco Growers Marketing Association* were formed in the dark tobacco area of Kentucky and Tennessee in 1931.

*The Virginia Bright Tobacco Cooperative Association*, and the *Virginia Dark-Fired Tobacco Growers Association* were formed in Virginia in 1932. The tobacco received from members was sold at auction. Approximately 2,000,000 pounds or 7 percent of the flue-cured tobacco produced in Virginia was handled in 1932, the last year of operation. The Virginia Dark-Fired Tobacco Growers Association handled more than 6,000,000 pounds or 47 percent of the dark-fired tobacco produced in Virginia in 1932. This association is still functioning.

There are other tobacco cooperatives which have been organized in the United States. None of the associations have been successful in regulating the marketing tobacco. The burden of the regulation which they have attempted has been borne by the members, while the non-members received an equal or greater amount of the advantages. Their situation has caused uprisings among the farmers, with occasional violence such as the days of the "night riders," when property was destroyed.

## XXVIII

### State Compacts

In 1936 it was proposed that the several States in which tobacco is grown should enact legislation providing for the regulation of the production and marketing of tobacco in such States. The States were to enact uniform legislation and, with the consent of Congress as required by the Constitution, to enter into compacts or agreements providing for the uniform enforcement of the several State laws.

A general conference agreement was reached as to the form and content of the State acts necessary to provide for the regulation of the production and marketing of tobacco, and a bill passed by the

Virginia Assembly was approved on March 13, 1936, by the Governor of Virginia. This bill empowers the State of Virginia to enter into a compact with other States in which the same type of tobacco was grown, and established a tobacco commission to be responsible for the enforcement of the act. The operation of the act with respect to any type of tobacco produced in Virginia was made contingent upon the execution of a compact with the other States in which the larger part of the same type of tobacco was grown.

Congress passed the necessary legislation authorizing the States to enter into compacts and the President approved the bill on April 25, 1936 (7 U. S. C. 515 etc.). The Act provided for the establishment of compacts among the several States with respect to each kind of tobacco as well as for the regulation of marketing of tobacco from farms in Puerto Rico in years that a compact authorizing quotas was in effect with respect to cigar-filler and binder types of tobacco in the principal producing States for these types of tobacco. The act authorized the making of advances to a tobacco commission established in each State for use in defraying costs of administering the State Act until such time as funds should be collected by the commission with which to repay the advances and to defray further administrative expenses. The act also authorized the Secretary of Agriculture to make loans for administrative purposes to an association of tobacco producers which might operate with respect to the 1936 crop in Georgia in a manner similar to the tobacco commissions established by the State acts providing for State compacts. This provision was made in order to make it possible for farmers and tobacco buyers in Georgia to participate in the regulations of marketings in 1936 because it was considered the Georgia legislature would not meet to consider and enact legislation to provide for a State compact for 1936.

An association of producers was formed and contracts were entered into by a large number of producers in Georgia and Florida. The producers signed contracts which were to become effective if Virginia, North Carolina, and South Carolina participated in the compact. The Governor of North Carolina did not call a special session of the North Carolina legislature. A compact with respect to flue-cured tobacco could not be effective without the participation of North Carolina since the operation of the Virginia act with respect to flue-cured tobacco was contingent upon the enactment of legislation in North Carolina.

Other State legislatures did not enact in 1936 legislation providing for State compact with respect to tobacco. However, the South Carolina legislature did consider such legislation.

In 1937 the General Assembly of Kentucky enacted a law which in some respects differed materially from the Virginia law. An act of the General Assembly of North Carolina passed in 1937 was in some

respects also different from the Virginia act. The States of Carolina, Georgia, Ohio, Connecticut, and Pennsylvania did not enact enabling legislation.

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*Intervening Defendant.*

**In the District Court of the United States for  
the Middle District of Georgia, Valdosta  
Division**

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JAMES H. MULFORD ET AL., PLAINTIFFS

*v.*

NAT SMITH ET AL., ORIGINAL DEFENDANTS,

and

UNITED STATES OF AMERICA, INTERVENING DEFENDANT

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**EXHIBITS REFERRED TO IN STIPULATION OF FACTS AND  
EVIDENCE**

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**Exhibit 1**

A. A. A. Flue-cured Tobacco 1938-1. Issued February 18, 1938. United States Department of Agriculture. Agricultural Adjustment Administration. By the Secretary of Agriculture of the United States of America.

**A PROCLAMATION**

Whereas the Act approved February 16, 1938, entitled "Agricultural Adjustment Act of 1938," provides:

"SEC. 312. (a) Whenever, on the 15th day of November of any calendar year, the Secretary [of Agriculture] finds that the total supply of tobacco as of the beginning of the marketing year then current exceeds the reserve supply level therefor, the Secretary shall proclaim the amount of such total supply, and, beginning on the first day of the marketing year next following and continuing throughout such year, a national marketing quota shall be in effect for the tobacco marketed during such marketing year. The Secretary shall also determine and specify in such proclamation the amount of the national marketing quota in terms of the total quantity of tobacco which may be marketed, which will make available during such marketing year a supply of tobacco equal to the reserve supply level. \* \* \*";

Whereas said Act contains, in section 301 (b), the following definitions of terms here pertinent:

"'Total supply' of tobacco for any marketing year shall be the carry-over at the beginning of such marketing year plus the estimated

(1)