

Wherefore, plaintiffs-appellants pray that the errors assigned above be reviewed and corrected by the Supreme Court of the United States, and that the judgment and decree entered in this case be reversed.

A. J. Little, Valdosta, Ga.; C. A. Avriett, Jasper, Fla.; J. L. Blackwell, Live Oak, Fla.; L. E. Heath, Douglas, Ga., Attorneys for the Plaintiffs-Appellants.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION FOR STAY—Filed October 21, 1938

To the Said Honorable Court:

Plaintiffs in the above stated cause, having presented a petition for the allowance of appeal to the Supreme Court of the United States and an appeal bond having been executed and approved, and a separate typewritten statement having been submitted disclosing the basis upon which it is contended that the Supreme Court of the United States has jurisdiction upon appeal to review the judgment or decree of the trial court, said plaintiffs now move for a stay of the order of said Court dissolving the restraining order theretofore granted, and directing that the funds in the hands of the Clerk be returned to the parties who paid them in for disposition according to law; and pray that said portion of said order be stayed until the final disposition of said cause, and that said funds remain in the registry of the Court pending the final disposition of this cause or the further order of the Court.

A. J. Little, Valdosta, Ga.; C. A. Avriett, Jasper, Fla.; J. L. Blackwell, Live Oak, Fla.; L. E. Heath, Douglas, Ga., Attorneys for Plaintiffs.

Service of a copy of the foregoing motion for a stay of the order and decree of this Court entered Oct. 7th, 1938,

is hereby acknowledged, and the granting of the relief prayed for in said motion is hereby assented to.

This the 18th day of October, 1938.

Franklin & Eberhardt, Attorneys for Defendant Warehousemen. John S. L. Yost, T. Hoyt Davis, Attorneys for United States, Intervening Defendant.

ORDER

It is ordered that the above motion for stay be allowed as prayed for.

This the 18th day of October, 1938.

Samuel H. Sibley, United States Circuit Judge. C. B. Kennamer, United States District Judge. Bascom S. Deaver, United States District Judge.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

[Title omitted]

WAIVER OF CITATION, ETC.—Filed October 21, 1938

Issuance and service of citation to the appellees upon appeal in the above entitled cause is hereby waived and service of the following papers is acknowledged;

1. Petition for, and order allowing, appeal.
2. Assignment of errors.
3. Jurisdictional statement under Rule 12 of the Revised Rules of the Supreme Court of the United States.

The right to file with the Clerk of the Supreme Court of the United States a statement against the jurisdiction of said Court in this case, provided for in paragraph 3 of said Rule 12, is hereby waived and notice of the provisions of

said paragraph 3 of said Rule given by the appellants is hereby acknowledged.

This 18th day of October, 1938.

Franklin & Eberhardt, Attorneys for Defendant
Warehousemen. John L. S. Yost, T. Hoyt Davis,
Attorneys for the United States, Intervening De-
fendant.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION AS TO CONTENTS OF TRANSCRIPT OF RECORD ON
APPEAL—Filed November 26, 1938

It is Hereby Stipulated and Agreed by and between the parties hereto, through their respective solicitors, that the transcript of record to be filed in the Supreme Court of the United States pursuant to the appeal heretofore allowed herein shall include the following:

- (1) Original bill of complaint filed in the Superior Court of Lowndes County, Georgia, July 27, 1938.
- (2) Restraining order issued by the Superior Court of Lowndes County, Georgia, July 27, 1938.
- (3) Rule to appear and answer bill of complaint on the third Monday in November, 1938, entered by Superior Court of Lowndes County, Georgia, July 27, 1938.
- (4) Return made by J. L. Spivey, Sheriff of Lowndes County, Georgia, on the 27th day of July, 1938.
- (5) Petition for removal of case to the District Court of the United States for the Middle District of Georgia, filed in the Superior Court of Lowndes County, Georgia, on August 5, 1938.
- (6) Removal bond, filed in the Superior Court of Lowndes County, Georgia, August 5, 1938.
- (7) Notice to plaintiffs of petition for removal and acknowledgment of service thereof, filed in the Superior Court of Lowndes County, Georgia, August 5, 1938.
- (8) Petition of the United States of America for leave to intervene as a party defendant filed in the United States District Court for the Middle District of Georgia, August 18, 1938.

(9) Order of District Court permitting United States of America to intervene as a party defendant, entered August 18, 1938.

(10) Request of Honorable Bascom S. Deaver for designation of two other judges to hear case, and order of Honorable Rufus E. Foster thereon, filed August 26, 1938.

(11) Petition of plaintiffs to continue restraining order in force and effect, filed August 26, 1938.

(12) Order of United States District Court continuing restraining order in effect, as modified therein, entered August 26, 1938.

(13) Amendment to bill of complaint, filed August 29, 1938.

(14) Answer of United States of America to bill of complaint and amendment thereto, filed September 2, 1938.

(15) Answer of defendants to bill of complaint and amendment thereto, filed September 3, 1938.

It is Further Stipulated that items (1) to (15), inclusive, above, are correctly set forth in the printed document entitled "Pleadings of Parties and Orders of Court", attached hereto, and that said printed document may be incorporated in the transcript as a part thereof in lieu of any other or further reference to, or copies of, the pleadings and orders therein mentioned, and, further, that the references contained in the said printed document to the proceedings in this cause in the Superior Court of Lowndes County, Georgia, and in the United States District Court for the Middle District of Georgia are true, as therein stated, and are hereby made a part of said transcript of record.

(16) Stipulation of facts and evidence, with exhibits thereto, filed September 19, 1938.

It is Further Stipulated that the printed copy of the stipulation of facts and evidence and the printed copy of exhibits thereto, attached hereto, are true and correct copies of said stipulation and of the material exhibits attached thereto, and that said printed copies may be incorporated in the transcript as a part thereof in lieu of any other or further reference to, or copies of, the said stipulation and exhibits.

(17) The petition for, and order allowing appeal, filed October 21, 1938.

(18) The jurisdictional statement under Rule 12 of the revised rules of the Supreme Court of the United States,

together with the findings of fact and conclusions of law and the opinion of the court, attached thereto.

(19) The waiver of issuance and service of citation to the appellees upon appeal and acknowledgment of service of appeal papers and waiver of right to file opposing jurisdictional statement.

(20) Plaintiffs-appellants' motion for stay of judgment and order of court allowing same, filed October 21, 1938.

(21) Assignment of errors.

(22) Final decree, entered October 7, 1938.

(23) This stipulation as to the contents of the transcript of record.

The Clerk of the above entitled Court is requested to transmit to the Clerk of the Supreme Court, Washington, D. C., only the papers designated herein.

This stipulation is made and entered into pursuant to Rule 10 of the Supreme Court of the United States.

Dated this 23rd, day of November, 1938.

A. J. Little, J. L. Blackwell, C. A. Avriett, L. E. Heath,
Solicitors for Plaintiffs-Appellants. T. Hoyt
Davis, United States Attorney, by John P. Cowart,
Asst. United States Attorney; John S. L. Yost,
Special Assistant to the Attorney General; Frank-
lin & Eberhardt, by O. W. Franklin, Solicitors for
Defendants-Appellees.

[File endorsement omitted.]

Clerk's certificate to foregoing transcript omitted in print-
ing.

IN SUPREME COURT OF THE UNITED STATES

**Statement of Points to be Relied on and Designation of
Parts of Record to be Printed—Filed December 5, 1938**

STATEMENT OF POINTS

Come now the Appellants in the above entitled cause, and state that the points upon which they, jointly and severally, intend to rely in this Court in this case are as follows:

Point 1

That the Agricultural Adjustment Act of 1938 is un-
constitutional, null and void, and that specifically Sections

312, 313 and 314 of said Act are unconstitutional, null and void for the following reasons :

(a) Said Act as a whole is a statutory plan to regulate and control the production of major agricultural products within the States, a matter beyond the powers delegated to Congress, in invasion of the powers reserved to the States under the Tenth Amendment to the Constitution of the United States.

(b) Sections 312, 313 and 314 of said Act, as part of said plan, embrace provisions regulating and controlling the production and marketing by producers of all tobacco produced within the several States, which are matters beyond the powers delegated to the federal government, in invasion of the powers reserved to the States under the Tenth Amendment to the Constitution of the United States.

See Assignments of Error, Numbers 1, 2, and 5.

Point 2

That the provisions of sub-section (c) of Section 313 of the Agricultural Adjustment Act of 1938 relating to the establishment of marketing quotas for tobacco farmers are unconstitutional, null and void for the following reasons: The provisions of said sub-section fixing the basis or standards by which said farm quotas are established are so vague, uncertain and indefinite as unconstitutionally to vest in the Secretary of Agriculture legislative powers in violation of Article 1, Section 1 of the Constitution of the United States, and furnish no protection to producers of tobacco against the unreasonable, arbitrary and capricious action on the part of the Secretary of Agriculture in the establishment of said farm marketing quotas, thereby constituting a denial of due process of law to producers in violation of the Fifth Amendment to the Constitution of the United States.

See Assignment of Errors, Numbers 3, 4 and 5.

Point 3

Said Act was unconstitutionally applied to the 1938 tobacco crop of Appellants, for the reason that the establishment of said marketing quotas for the farms of appellants, subsequent to the planting, cultivation and gathering of their respective tobacco crops, during all of which time appellants did not know and had no means of ascertaining even the approximate number of pounds of tobacco each might raise and sell free of penalty, rendered it impossible for appel-

lants to take into consideration at the time of planting and cultivation possible restrictions on marketing and avoid the labor and expense of producing tobacco in excess of marketing quotas, thereby depriving appellants of their property without due process of law in violation of the Fifth Amendment to the Constitution of the United States.

See Assignments of Error, Numbers 6 and 5.

Point 4

For all the above reasons the trial Court erred in denying the relief prayed for in the bill of complaint and in taxing the costs against appellants.

See Assignments of Error No. 7.

DESIGNATION OF PARTS OF THE RECORD NECESSARY FOR CON-
SIDERATION OF THE POINTS TO BE RELIED ON

And the appellants further state that the entire record as set forth in the "Stipulation as to Contents of Transcript of Record on Appeal" is necessary for the consideration of the points above specified and that the whole of the record as filed in this Court must be prepared for the consideration of the cause.

Respectfully submitted, A. J. Little, C. A. Avriett,
J. L. Blackwell, L. E. Heath, Solicitors for Appel-
lants.

Service of the above and foregoing "Statement of Points and Designation of the Record is hereby acknowledged, copy received, and all other further service or notice is hereby waived.

This the 2 day of December, 1938.

Franklin & Eberhardt, O. W. Franklin, Solicitors for
Nat Smith, et al. Robert H. Jackson, Solicitor
General, for the United States of America, Ap-
pellee.

[File endorsement omitted.]

Endorsed on cover: Enter L. E. Heath. File No. 42,990.
M. Georgia, D. C. U. S. Term No. 505. James H. Mulford,
et al., appellants, vs. Nat. Smith, et al. Filed December 5,
1938. Term No. 505, O. T., 1938.