

2810

STATE OF ALABAMA

BALDWIN COUNTY

TO ANY SHERIFF OF THE STATE OF ALABAMA - GREETING:

WE COMMAND YOU THAT you summon JOHNNIE MAE DAVISON to be and appear before the Judge of the Circuit Court of Baldwin County, exercising Chancery Jurisdiction within sixty days after the service of the summons, and there to answer, plead or demur without oath to a bill of complaint, lately exhibited by L. Irwin & Son, a co-partnership composed of Lamar Irwin and Francis Irwin, and Lamar Irwin and Francis Irwin, individually, against the said Johnnie Mae Davison, and further to do and perform what the said judge shall order and direct in that behalf, and this the Defendant shall in no wise omit under penalty of the law, and we further command that you return this writ with your execution thereon, to our said Court immediately upon the execution thereof.

WITNESS, Alice J. Duck, Register of said Circuit Court this the 16 day of May 1952.

*Alice J. Duck*  
Register.

L. IRWIN & SON, a co-partner-		IN THE CIRCUIT COURT OF
ship composed of Lamar Irwin		
and Francis Irwin and Lamar		
Irwin and Francis Irwin,		
individually,		
COMPLAINANTS		BALDWIN COUNTY, ALABAMA,
VS		
JOHNNIE MAE DAVISON		
DEFENDANT		IN EQUITY.

TO THE HONORABLE TELFAIR J. MASHBURN, JR., JUDGE OF THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA, SITTING IN EQUITY:

Come L. Irwin & Son, a co-partnership, composed of Lamar Irwin and Francis Irwin, and Lamar Irwin and Francis Irwin, individually, and humbly complaining against Johnnie Mae Davison, respectfully show unto your Honor as follows:

FIRST: That the complainants are over the age of twenty-one years and are residents of Baldwin County, Alabama; that the said Johnnie Mae Davison is over the age of twenty-one years and a resident of Baldwin County, Alabama.

SECOND: Complainants further show that on, to-wit: January 15, 1952, the complainants and the said defendant entered into a contract, a copy of which is attached hereto marked exhibit "A" and made a part of this petition, wherein and whereby the defendant contracted and agreed to cultivate and harvest 30 acres of irish potatoes during the Spring of 1952, and the complainants contracted and agreed to advance to the defendant the seed potatoes necessary to plant said acreage, on the basis of 1100 pounds per acre, and fertilizer necessary for growing the same, at the rate of 2500 pounds to the acre, and such spray material that might be necessary, all to be furnished F. O. B. Foley, Alabama, at such time as might appear proper, and wherein and whereby the defendant contracted and agreed to accept delivery of the said seed potatoes, fertilizer and spray material and to remove the same to a safe place when ready for delivery, and to furnish at his own expense all labor, teams, and machinery including spray and dust apparatus, and to do all things necessary to plant, grow and harvest and to deliver the said crop of potatoes to any produce buyer in Foley, Alabama, who might be specified by complainants, provided such buyer should pay cash prices equal to cash prices paid by other cash buyers at the same place, for the same grade; and in and by said agreement the proceeds of the said crop were to be divided as follows: that eighty percent of such proceeds shall be applied to the payment of the costs of seed, fertilizer, spray material and other advances made by complainants to defendant, and twenty percent of such proceeds to be paid over to defendant, and after said seed, fertilizer, spray materials and other advances were paid in full, all other proceeds should be divided twenty percent to complainants and eighty percent to defendant;

And complainants further show that they have in all things, fully and completely complied and kept all stipulations and agreements therein made by them and they did deliver to the said defendant 1100 pounds of seed potatoes per acre, 2500 pounds of fertilizer per acre and such spray material as was necessary in the growing of the said crop of potatoes and the same were accepted by the said defendant and used by her in and about the growing of the crop of potatoes during the Spring of 1952; and the said crop of potatoes are ready for harvesting, and the defendant has breached the said agreement in this that she has failed and refused and continues to fail and refuse to deliver such crop of potatoes to a produce buyer in Foley, Alabama, although complainants have, as they have a right to do under such contract, specified a produce buyer in foley, Alabama, to whom such crop of potatoes should be delivered under the said contract, who stands ready, able and willing to pay cash prices therefor equal to cash prices paid by other cash buyers at the same place for the same grades, and the defendant having failed and refused to deliver said crop of potatoes to such produce buyer and continuing to fail to deliver the same to such produce buyer advises complainants that it is her purpose and intent not to do so, but to sell and deliver the same to another buyer or to other buyers.

And complainants show that defendant cannot respond in damages and that, should the said Johnnie Mae Davison refuse to deliver the said crop of potatoes as provided in the afore-said contract, irreparable injury would thereby be done to complainants, the said Johnnie Mae Davison not having assets upon which complainants might recover on any judgment they might obtain for damages resulting from such breach of said contract;

WHEREFORE, complainants pray that this Honorable Court will take jurisdiction of the cause made of this petition and require the defendant to plead, answer or demur to the same

within the time and under the pains and penalties prescribed by law and the practice of this Honorable Court;

Complainants further pray that this Honorable Court will grant to complainants a temporary writ of injunction, restraining the said Johnnie Mae Davison from selling, delivering or otherwise disposing of the said crop of potatoes to any person other than the cash buyer in Foley, Alabama, specified by complainants so long as such cash produce buyer shall pay therefor cash prices equal to the cash prices paid by other buyers at said place for the same grades, upon complainants entering into such bond as this court shall require;

And complainants further pray that upon the hearing made by this petition, this Honorable Court will make and enter an order and decree perpetuating and continuing such writ of injunction, restraining the said Johnnie Mae Davison from selling, delivering or otherwise disposing of the said crop of potatoes to any person other than the cash buyer in Foley, Alabama, specified by complainants so long as such cash produce buyer shall pay therefor cash prices equal to the cash prices paid by other buyers at said place for the same grades;

And complainants pray for such other further and different relief as they shall be entitled to receive in the premises, and the complainants pace themselves wholly in the jurisdiction of this Honorable Court and offer to do and perform whatsoever this Honorable Court shall require of them.

  
Solicitor for complainants

STATE OF ALABAMA

BALDWIN COUNTY

Before me, the undersigned Notary Public in and for said State and County this day personally appeared Lamar Irwin, who being by me duly sworn deposes and says, that he has read the foregoing petition of L. Irwin & Son against Johnnie Mae Davison and knows the matters therein alleged and that the facts therein alleged are true.

Lamar Irwin

Sworn to and subscribed before me this the 16 day of May, 1952.

Naomi M. Pilgrimage  
Notary Public, Baldwin Co., Ala.

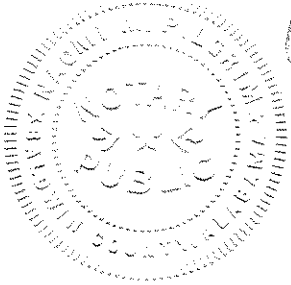


EXHIBIT "A"

IRISH POTATO CONTRACT

This agreement, made in duplicate, and entered into by and between L. Trwin & Son party of the first part and Johnnie Mae Davison party of the second part, witnesseth;

That for and in consideration of the mutual agreements of the party of the first part and the party of the second part hereinafter contained it is agreed and contracted as follows:

FIRST: That the party of the second part will plant, cultivate, grow and harvest 30 acres of Irish potatoes during the Spring season of 1952 under the terms and conditions hereinafter set forth. The above mentioned acreage is to be the entire acreage planted by the party of the second part or his family unless by mutual consent of both parties to this contract.

SECOND: The party of the first part shall advance to the grower the seed necessary to plant said acreage on the basis of 1100 pounds per acre; the fertilizer necessary for the growing of same at the rate of 2500 pounds per acre; and such spray material as they may deem necessary. All of the above to be furnished F. O. B. Foley, Alabama at such times as may appear proper to the party of the first part.

THIRD: The party of the second part agrees to accept delivery of said seed and fertilizer and to remove same to a safe and proper place upon being notified by the party of the first part that same is ready for delivery.

FOURTH: The party of the second part agrees to furnish at his own expense all labor, teams and machinery, including spraying and dusting apparatus, and to do all things necessary to plant, grow, harvest and deliver said crop to any produce buyer in Foley, Alabama, who might be specified by the party of the first part, provided said buyer shall pay cash prices equal to cash prices paid by other cash buyers at the same place for the same grade.

FIFTH: The party of the second part agrees that at any time the party of the first part shall deem himself insecure that the party of the first part is hereby authorized and empowered to enter upon said land and take possession of said crop and to cultivate, care for and harvest said crop and all cost of said cultivation and harvesting shall be paid by the party of the second part, together with interest thereon at 8% per annum.

SIXTH: The proceeds of the crop to be divided as follows:

1st. First party shall be reimbursed for the total cost of fertilizer, seed, spray material and any other advances made towards said crop from the first proceeds of the crop, and of the first proceeds of the crop, 80 per cent thereof shall be applied to the payment of the cost of fertilizer, seed, spray material and any other advances made toward said crop, and 20 per cent thereof to be paid over to the second party.

2nd. All other proceeds shall be divided one-fifth and four-fifths.

IN WITNESS WHEREOF the parties to this contract and agreement have this day signed and sealed this instrument this 15th day of January, 1952.

Witnesses:  
L. Irwin  
Herbert Lunsford.

L. Irwin & Son (seal)  
Party of the first party.

Johnnie Mae Davison (seal)  
Party of the second part.

L. IRWIN & SON, a co-  
partnership composed of  
Lamar Irwin and Francis  
Irwin, and Lamar Irwin and  
Francis Irwin, individually,

COMPLAINANTS

VS

JOHNNIE MAE DAVISON

DEFENDANT

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA,

IN EQUITY

This cause being submitted to the Court upon application of the complainants for temporary writ of injunction as prayed for in the original complaint herein, and upon consideration thereof the Court being of the opinion that the same should be granted:

It is therefore ordered, adjudged and decreed by the Court that upon the complainants entering into a good and sufficient bond, conditioned as provided by law, in the sum of TWENTY-FIVE HUNDRED (\$2500.00) DOLLARS, same to be approved by the Register of this Court, that <sup>there</sup> ~~the Register~~ issue a temporary writ of injunction as prayed for in the original bill in this cause.

Done and ordered, this the 16<sup>th</sup> day of May, 1952.

Julius A. Mauldin Jr.  
Circuit Judge, in Equity Sitting.



STATE OF ALABAMA

BALDWIN COUNTY

KNOW ALL MEN BY THESE PRESENTS, that we, L. Irwin & Son, a co-partnership composed of Lamar Irwin and Francis Irwin, and Lamar Irwin and Francis Irwin, individually, are held and firmly bound unto Johnnie Mae Davison in the sum of TWENTY-FIVE HUNDRED (\$2500.00) DOLLARS, for the payment of which we bind ourselves, our heirs, assigns, executors, or administrators, jointly and severally by these presents.

The condition of this bond is this: That whereas, the above bound L. Irwin & Son, a co-partnership composed of Lamar Irwin and Francis Irwin, and Lamar Irwin and Francis Irwin, individually, in a petition filed by them against Johnnie Mae Davison prayed for and obtained a writ of injunction out of the Circuit Court of said County upon the approval of this bond, restraining and enjoining the said Johnnie Mae Davison from selling, delivering and otherwise disposing of the crop of potatoes grown by him under contract with L. Irwin & Son, dated January 15, 1952, to any person other than to a produce buyer in Foley, Alabama, specified by L. Irwin & Son, provided and so long as such produce buyer shall pay cash prices therefor equal to cash prices paid by other cash buyers in the same place for the same grades.

Now, if, on the dissolution of such injunction, the said L. Irwin & Son, a co-partnership composed of Lamar Irwin and Francis Irwin, and Lamar Irwin and Francis Irwin, individually, shall pay to Johnnie Mae Davison such damages and costs as she may sustain by virtue of the issuance of such writ of injunction, then this bond shall be null and void; otherwise, to remain in full force and effect.

May Witness our hands and seals this the 16 day of May, 1952.

L. Irwin & Son, a co-partnership  
composed of Lamar Irwin and Francis  
Irwin

By Lamar Irwin (SEAL)  
Member Partnership

Lamar Irwin (SEAL)

Francis Irwin (SEAL)

[Signature] (SEAL)

[Signature] (SEAL)

Taken and approved this 16 day of May, 1952.

J. H. Madlock, Jr.  
Register. Judge

L. IRWIN & SON, a co-partnership composed of Lamar Irwin and Francis Irwin, and Lamar Irwin and Francis Irwin, individually

IN THE CIRCUIT COURT OF

COMPLAINANTS

BALDWIN COUNTY, ALABAMA,

VS

JOHNNIE MAE DAVISON

IN EQUITY

DEFENDANTS

TO JOHNNIE MAE DAVISON:

WHEREAS, L. Irwin & Son, a co-partnership composed of Lamar Irwin and Francis, and Lamar Irwin and Francis Irwin, individually, have this day filed their petition in this said Circuit Court in Equity against Johnnie Mae Davison, praying among other things that the said Johnnie Mae Davison be enjoined and restrained from selling, delivering and otherwise disposing of the crop of potatoes grown by her under contract with L. Irwin & Son, dated January 15, 1952, to any person other than to a produce buyer in Foley, Alabama, specified by L. Irwin & Son, provided and so long as such produce buyer shall pay cash prices therefor equal to cash prices paid by other cash buyers in the same place for the same grades;

AND WHEREAS, on said complaint being exhibited to me, I, Telfair J. Mashburn, Jr., Judge of the Circuit Court of Baldwin County, Alabama, in equity; on the 11 day of May, 1952, I did order that upon complainants entering into bond with sureties in the sum of ~~TWENTY-FIVE HUNDRED~~ (\$2500.00) DOLLARS, and approved, payable and conditioned according to law, a writ of injunction issue out of this Court, according to the prayer of said complaint;

AND WHEREAS, bond has been given and approved as required by said order, therefore, this is to command and strictly enjoin you, Johnnie Mae Davison, not to sell, deliver or otherwise dispose of the crop of potatoes grown by you under contract with L. Irwin & Son, dated January 15, 1952, to any person other than to a produce buyer in Foley, Alabama, specified by L. Irwin & Son, provided and so long as such produce buyer shall pay cash prices therefor equal to cash prices paid by other cash buyers in the same place for the same grades; and this you will in no wise omit under penalty of the law.

Witness this the 16 day of May, 1952.

Telfair J. Mashburn, Jr.  
Judge.

TO THE SHERIFF OF BALDWIN COUNTY:

You are hereby commanded to execute this writ, and return the same with your endorsement thereon, to this Court, with all convenient speed.

Witness my hand, this the 16 day of May, 1952.

Telfair J. Mashburn, Jr.  
Judge.

2810

L 5.30 PM

Received in Sheriff's Office  
this 4 day of May, 1952  
TAYLOR WILKINS, Sheriff

4:40 PM

Executed May 1.  
5.30 P.M. By serving  
copy of the within  
writ on  
Johnnie Mac Davison

Taylor Wilkins Sheriff  
By Edleigh S. Teaborn  
D.S.

RECORDED