

No. 12653

# Supreme Court of Illinois

Wood, et al.

---

vs.

Child, et al.

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71641  7

116-168

Grimaldi, Wood, & Co.

vs

Charles Wood, & Co.

Apportion

196

12652

1858

X

Refused

N<sup>o</sup> 196

---

Timothy Wood et al

vs.

Orlando Child et al

---

Points for appellees

Wilkinson & Pleasants  
for appellees

Filed May 16 1838

L. Leland  
clerk

(Copy of Bill) Filed July 25<sup>th</sup> / 1857

In Chancery.

page 1

To the Hon. J. M. Drury  
Judge of the Circuit Court of the  
County of Rock Island & State of  
Illinois, in Chancery. September  
Term 1857.

Humbly complaining  
show unto your honor, your orators  
Timothy Ward & J. E. Salisbury of the  
County of Rock Island & State of  
Illinois; That your orators on the  
3<sup>rd</sup> day of October 1856 were indebted  
to Orlando Child of the state & county  
afore said. (One of the defendants  
hereinafter named) in the sum of  
Twenty nine Hundred Dollars at  
that amount, which sum of money  
your orators were at the time unable  
to pay, whereupon your orators did  
execute & deliver to the said Orlando  
Child, certain promissory notes  
to wit One Dated October 3<sup>rd</sup> / 1856  
to be paid by your orators to the said  
O. Child on the 19<sup>th</sup> day of February  
after date for the sum of \$700,  
Seven Hundred Dollars. A copy of which

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- is hereto attached marked (A) & considered a part of this Bill.
- (2) One of the same date & tenor aforesaid to be paid by your aratons to the said child on the 19<sup>th</sup> day of February 1858 for the sum of (\$640.) six hundred & forty dollars a copy of which is hereto attached marked (B) & considered a part of this Bill.
- (3) One of the same date & tenor aforesaid to be paid by your aratons to the said child on the 19<sup>th</sup> day of February 1858 for the sum of (\$580.) five hundred & eighty dollars a copy of which is hereto attached marked (C) & considered a part of this Bill.
- (4) One of the same date & tenor aforesaid to be paid by your aratons to the said child on the 19<sup>th</sup> day of February 1860 for the sum of (\$520.) five hundred & twenty dollars a copy of which is hereto attached marked (D) & considered a part of this Bill.
- (5) One of the same date & tenor aforesaid to be paid by your aratons to the said child on the 19<sup>th</sup> day of February 1861 for the sum of (\$560.) five hundred & sixty dollars a copy of which

(3)

is here to attached marked (C) & considered a part of this Bill. And your arators further show that they did at the same time & place execute certain Jours of Attorneys on each of said notes, copies of which are herewith attached, marked in the same manner as the notes above mentioned & considered part of this Bill. And your arators further show that the said Orlando Leibel did himself personally or by his attorney on or about the 4<sup>th</sup> day of April 1887 wrongfully & unjustly cause to be entered judgment on the above mentioned notes before they were due & that said judgment was entered ~~on the 4<sup>th</sup> day of April~~ - & on the judgment book for said county in the sum of (\$2975.04) Two thousand nine hundred & seventy five dollars & four cts. in favor of said Leibel & against your arators. And your arators further show that the said sum for which said judgment was entered, to wit (\$2975.04) Two thousand nine hundred & seventy five dollars & four cts. includes the several sums on all the above notes when they should become due, according to the tenor thereof & the attorneys fees for the

Done. And your creators further show that said notes will sub. according to the tenor of the same, become due before the respective times, named therein, as will be shown by reference to the copies thereof, hereto attached.

And your creators further show, that on or about the 29<sup>th</sup> day of June 1857, the said Lehigh did unjustly & before said money become due, for which said judgment was entered, cause to be issued from the <sup>County</sup> Clerk's office in said county, execution upon said judgment, & that said execution was placed in the hands of the Sheriff of said county, (which said Sheriff Ezra M. Beardsley, your creators pray may be made a party to this Bill), & that said Sheriff is about to satisfy said execution by levying on the property of your creators to their great inconvenience & oppression.

And your creators further show that they have by themselves & their agents, repeatedly applied & in a friendly manner requested said defendant, that they would not cause said execution to be issued on said judgment, before said money

were done & your creditors well hoped  
that they would have complied with such  
reasonable request as in conscience  
& equity they ought to have done.

But now so it is. May it please  
your Honor that the said defendant  
conceiving & conspiring with  
divers persons unknown to your creditors  
(but whose names your creditors pray  
when discovered may be inserted therein  
as defendant & parties to this suit with  
proper & sufficient words to charge them  
in the premises) in order to oppress &  
injure your creditors did absolutely  
refuse to comply with such reasonable  
request & he at all times alleges &  
pretends that said money was due to  
him at & before the time when said  
execution was issued & that said  
judgment was properly entered up & that  
said execution was of right issued  
& is now properly in the hands of the  
Sheriff of this County.

Whereas your creditors charge the truth to  
be the contrary of this, that said sum  
of money to wit (\$2975.04) two thousand  
nine hundred & seventy five dollars & bars  
for which said execution was issued  
must be due & that it is not yet due &

6 that said sum of money will must be due  
before the 18<sup>th</sup> day of February 1861.

And your orators further charge that said  
confederates have conspired together to  
obtain said amount of money before it is  
due & to defraud, oppress & injure your  
orators by causing & execution to be issued  
for said money before it was due & compel  
by the fact your orators to very great inconve-  
nience & trouble & to oppress & injure  
them by causing said execution to be  
issued. And your orators further charge  
that in equity & good conscience  
no such execution should have been  
issued & further that said Orlando  
Lehman had not by himself or attorney  
done anything by virtue of said power  
of attorney heretofore named which would  
entitle him to have execution issued  
immediately. All which acts, doings,  
& pretenses & encroachments of the said  
confederates are contrary to equity &  
good conscience & tend to the man-  
ifest wrong & injury of your orators.

In consideration whereof & for that  
your orators can only have relief  
in the premises in a Court of Equity  
where matters of this nature are properly

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cognizable & returnable. To the end  
therefore that the said defendants & their  
confederates when discovered may  
according to the best of their respective  
knowledge ~~and information~~ & belief, full  
full true & perfect answer make  
to all & singular the charges & matters  
aforesaid, & that as fully & particularly  
as if the same were here repeated & by  
& every of them distinctly interrogated  
therein & make especially that the said  
defendants may in manner aforesaid  
answer & act forth.

Whether it is not a fact that judg-  
ment, was entered up on the above  
mentioned ~~moment~~ fine notes on or about the  
4<sup>th</sup> day of April 1857 in the sum of  
(\$2975.04) two thousand nine hundred  
& seventy five dollars & band cent &

Whether it is not a fact that ex-  
ecution was issued on said judgment  
on or about the 29<sup>th</sup> day of June 1857  
& placed in the hands of the Sheriff  
of said county which said Sheriff  
is about to satisfy by levying on the  
property of the said complainant, &  
Whether it is not a fact that said  
amount of money (\$2975.04) two thousand  
nine hundred & seventy five dollars &

four cents, for which said judgment was entered  
on which said execution was issued  
by the said clerk of the Circuit Court  
of this county, was not due at the time  
said execution was issued. & not yet due  
& that it will not be due before the  
18th day of February 1861. &

Whether it is not a fact that said  
defendant <sup>has</sup> never filed any cognovit  
with an agreement therein that no  
writ of error or appeal should be pro-  
duced; or any bill in equity filed  
to interfere in any manner with the  
appraisal of said judgment & the  
issuing of execution immediately thereon  
as is specified in said power of attorney.  
And that the said defendant Orlando  
Lehman & Co. or his Barbers, Sheriff, their  
counselors, attorneys, agent & confederates  
may be restrained & compelled to desist  
& refrain from further appearing or interfering  
or creating & that your orators may have  
such other & further relief as the nature  
of the case may require & as to your honor  
may seem meet. May it please your honor  
to grant unto your orators your honors  
most gracious writ of injunction, issuing  
out of a under the Seal of this honorable

court to be directed to the said  
 Orlando Leibel & Co Merchants, their  
 counsellors, attorneys, agents & solicitors  
 who commanding them & each of  
 them absolutely to desist & refrain  
 from proceeding further against your  
 creditors in the said action of collect-  
 ing the aforesaid sum for which  
 said judgment was entered &  
 execution issued before such time  
 as said money shall become due  
 according to the tenor of the notes  
 copies of which are hereto attached.

And may it please your honor  
 to grant unto your creditors his honors  
 most gracious writ of Subpoena to  
 be directed to the said defendants  
 Orlando Leibel & Co Merchants  
 commanding them on a certain day  
 & under a certain penalty to be  
 limited personally to be & to appear  
 before your honor in this honorable  
 court & then & there fully to answer  
 & perfect answer make to all & sin-  
 gular the premises & further to stand  
 to perform & abide such further order  
 direction & decree therein as to your honor  
 shall seem meet & your creditors will ever  
 pray.  
 J. H. Salisbury  
 Graham & Metcalf Solicitors for complainant

State of Illinois  
County of Rock Island

Just

On this 25<sup>th</sup> day of July 1857 personally appeared the above named Timothy Wavel & made oath that he has read the above Bill read & knows the contents thereof & that the same is true of his own knowledge & as to the matters that are therein stated to be on information & belief & that as to those matters he believes them to be true

H. L. Ford  
Palmer Magistrate  
& Ex-Officio J.P.

On the 25<sup>th</sup> day of July 1857 before me personally appeared the above named J. H. Salisbery & made oath that he has read the above Bill read & knows the contents thereof & that the same is true of his own knowledge & as to the matters that are therein stated to be on information & belief & as to those matters he

(S) Copy of Note No 4

\$520.

March 22<sup>nd</sup> Oct 5<sup>th</sup> 1886

On the 19<sup>th</sup> of February 1860 After  
date for note received we promise  
to pay Orlando Child as Order  
Five Hundred & Twenty Dollars

(Signed) Timothy Wood  
J. H. B. B. B. B.

Know all men by these presents that  
Whereas I the Subscribed am justly indebted  
unto Orlando Child upon a certain  
promissory note bearing even date  
herewith for the sum of Five Hundred &  
Twenty Dollars made payable to the said  
Orlando Child as Order & due Feb 19<sup>th</sup>  
1860. after the date hereof.

Now therefore in consideration of the  
premises & of the sum of one dollar to  
me in hand paid the receipt whereof  
is hereby acknowledged I do hereby make  
constitute & appoint Orlando Child as  
my Attorney of my Court of Record to be  
my true & lawful attorney irrevocably for  
me & in my name place & stead to enter  
my appearance before any Justice of the Peace  
or in any Court of Record in any of the States  
or Territories of the United States or

elsewhere either in term time or in vacation  
 at any time from & after the  
 date hereof at the option of the said  
 Orlando Leibel to make a return of  
 process & costs a judgment in favor  
 of the said Orlando Leibel or his assigns  
 or legal representatives upon the said note  
 for the above sum or for as much as  
 appears to be due according to the tenor & effect  
 of said note with interest thereon at the  
 rate of six & fifteen dollars attorney's  
 fees which my said attorney is authorized  
 in my behalf to file a Cognovit for the amount  
 that may be so due with an agreement therein  
 that no writ of error or appeal shall be  
 prosecuted nor any bill in Equity filed to inter-  
 pre in any manner with the affirmation of my  
 judgment that may be entered by virtue  
 hereof & also to release all errors that may  
 intervene in the entering up of the judgment or  
 issuing Execution immediately thereon  
 thereby ratifying & confirming all that my  
 said attorney may do by virtue hereof  
 & for the consideration above  
 mentioned I do hereby fully stipulate  
 & agree that all right interest or  
 benefit accruing to me by virtue  
 of an act of the General Assembly

Moline, Ill.,

Oct 8<sup>th</sup>

1856

On the 18<sup>th</sup> Feb. 1855 After date, for Value Received in Promise to Pay.....

Orlando Child or Order Six Hundred & Forty

DOLLARS.

Timothy Wood  
J. H. Salisbury

**Know All Men by these Presents,** THAT WHEREAS, I, the Subscriber, am justly indebted unto  
Orlando Child upon a certain Promissory Note, bearing even date herewith, for the sum of  
Six Hundred & Forty DOLLARS, made payable to the said  
Orlando Child or Order, and due February 19<sup>th</sup> 1855  
after the date hereof.

NOW, THEREFORE, in consideration of the premises, and of the sum of one dollar, to me in hand paid, the receipt whereof is hereby acknowledged, I do hereby make, constitute and appoint Orlando Child or any Attorney of any Court of Record, to be my true and lawful Attorney, irrevocably, for me and in my name, place and stead, to enter my appearance before any Justice of the Peace, or in any Court of Record, in any of the States or Territories of the United States, or elsewhere, either in term time or in vacation, at any time from and after the date hereof, at the option of the said Orlando Child to waive service of process, and confess a judgment in favor of the said Orlando Child or his assigns or legal representatives, upon the said Note, for the above sum, or for as much as appears to be due, according to the tenor and effect of said Note, with interest thereon at the rate aforesaid, and fifteen dollars Attorney's fees. And my said Attorney is authorized in my behalf to file a Cognovit for the amount that may be so due, with an agreement therein that no writ of error or appeal shall be prosecuted, nor any bill in equity filed, to interfere in any manner with the operation of any judgment that may be entered by virtue hereof, and also to release all errors that may intervene in the entering up of the judgment or issuing Execution immediately thereon. Hereby ratifying and confirming all that my said Attorney may do by virtue hereof, and for the consideration above mentioned, do hereby further stipulate and agree that all right, interest, or benefit accruing to me by virtue of an Act of the General Assembly of the State of Illinois, entitled "AN ACT TO EXEMPT HOMESTEADS FROM SALE ON EXECUTION," approved February 11th, A. D. 1851, is hereby waived and released, and any property which I now hold, or may hereafter acquire, which would be exempt from levy and sale on Execution, by virtue of said Act is hereby made subject to such levy and sale, by virtue of this agreement, the same as though such Act had not passed.

WITNESS, my Hand, this thir day of October A. D. 1856.

IN PRESENCE OF

J. P. Hodges

Timothy Wood  
J. H. Salisbury

SEAL

SEAL

State of Illinois {  
Rock Island City { 1857

On the 23<sup>rd</sup> day of March 1857

Before me personally came S P Hodges, witness to the will in controversy to me known who being by me <sup>directly</sup> examined did depose & say that he remembered in the Town of Rock Island in said county, that he knew Timothy Mowd & John & Paul's boys the individuals charged in & who executed said will & power of attorney, that he was present & that he signed the said Timothy Mowd & John & Paul's boys sign said & deliver the same as their act & deed & that the said Timothy Mowd & John & Paul's boys acknowledged the execution thereof, whereupon the will S P Hodges became the subscribing witness thereto.

H. L. Ford, Notary Public.  
Ex Officio J. P. [Signature]

Moline, Ill.,

Oct 8 1856

1856

On the 19<sup>th</sup> Feb. 1859 After date, for Value Received we Promise to Pay.....

Orlando Leibel or Order Francis Leibel &amp; Co. Cash

DOLLARS.

Twenty Dollars  
J. H. Salisbury

Know All Men by these Presents, THAT WHEREAS, I, the Subscriber, am justly indebted unto  
 Orlando Leibel upon a certain Promissory Note, bearing even date herewith, for the sum of  
 Twenty Dollars, made payable to the said  
 Orlando Leibel or Order, and due Feb 19<sup>th</sup> 1859

after the date hereof.

NOW, THEREFORE, in consideration of the premises, and of the sum of one dollar, to me in hand paid, the receipt whereof is hereby acknowledged, I do hereby make, constitute and appoint Orlando Leibel or any Attorney of any Court of Record, to be my true and lawful Attorney, irrevocably, for me and in my name, place and stead, to enter my appearance before any Justice of the Peace, or in any Court of Record, in any of the States or Territories of the United States, or elsewhere, either in term time or in vacation, at any time from and after the date hereof, at the option of the said Orlando Leibel to waive service of process, and confess a judgment in favor of the said Orlando Leibel or his assigns or legal representatives, upon the said Note, for the above sum, or for as much as appears to be due, according to the tenor and effect of said Note, with interest thereon at the rate aforesaid, and fifteen dollars Attorney's fees. And my said Attorney is authorized in my behalf to file a Cognovit for the amount that may be so due, with an agreement therein that no writ of error or appeal shall be prosecuted, nor any bill in equity filed, to interfere in any manner with the operation of any judgment that may be entered by virtue hereof, and also to release all errors that may intervene in the entering up of the judgment or issuing Execution immediately thereon. Hereby ratifying and confirming all that my said Attorney may do by virtue hereof, and for the consideration above mentioned, do hereby further stipulate and agree that all right, interest, or benefit accruing to me by virtue of an Act of the General Assembly of the State of Illinois, entitled "AN ACT TO EXEMPT HOMESTEADS FROM SALE ON EXECUTION," approved February 11th, A. D. 1851, is hereby waived and released, and any property which I now hold, or may hereafter acquire, which would be exempt from levy and sale on Execution, by virtue of said Act is hereby made subject to such levy and sale, by virtue of this agreement, the same as though such Act had not passed.

WITNESS, my Hand, this 19<sup>th</sup> day of October A. D. 1856.

IN PRESENCE OF

J. P. Hodges

Twenty Dollars

J. H. Salisbury

SEAL

SEAL

State of Illinois  
County of Cook

not

On the 23<sup>rd</sup> day of March 1897  
before me came S P Hodges, subscribing witness to the within  
conveyance, to me personally known, who being by me duly  
sworn did depose & say, that he resided in Chicago in said  
County, that he knew Timothy Mowbray of E. B. Linsley's firm, the  
instrument described in & who executed the said convey-  
ance, that he was present & saw the said Timothy Mowbray  
of E. B. Linsley firm seal & deliver the same as a brother agent  
& deed & that the said Timothy Mowbray of E. B. Linsley acknowledged  
the execution thereof. Whereupon the said S P Hodges became the  
subscribing witness thereto.

H. L. Ford, Police Magistrate &c  
Ex Officio J P

Moline, Ill., Oct 8<sup>th</sup> 1856 1856On the 19<sup>th</sup> February After date, for Value Received me Promise to Pay...Orlando Leibel or Order Seven Hundred

DOLLARS.

Samuel Wood  
J. H. SalisburyKnow All Men by these Presents, THAT WHEREAS, I, the Subscriber, am justly indebted unto  
Orlando Leibel upon a certain Promissory Note, bearing even date herewith, for the sum of  
Seven Hundred DOLLARS, made payable to the said  
Orlando Leibel or Order, and due Feb. 19<sup>th</sup> 56

after the date hereof.

NOW, THEREFORE, in consideration of the premises, and of the sum of one dollar, to me in hand paid, the receipt whereof is hereby acknowledged, I do hereby make, constitute and appoint Orlando Leibel or any Attorney of any Court of Record, to be my true and lawful Attorney, irrevocably, for me and in my name, place and stead, to enter my appearance before any Justice of the Peace, or in any Court of Record, in any of the States or Territories of the United States, or elsewhere, either in term time or in vacation, at any time from and after the date hereof, at the option of the said Orlando Leibel to waive service of process, and confess a judgment in favor of the said Orlando Leibel or his assigns or legal representatives, upon the said Note, for the above sum, or for as much as appears to be due, according to the tenor and effect of said Note, with interest thereon at the rate aforesaid, and fifteen dollars Attorney's fees. And my said Attorney is authorized in my behalf to file a Cognovit for the amount that may be so due, with an agreement therein that no writ of error or appeal shall be prosecuted, nor any bill in equity filed, to interfere in any manner with the operation of any judgment that may be entered by virtue hereof, and also to release all errors that may intervene in the entering up of the judgment or issuing Execution immediately thereon. Hereby ratifying and confirming all that my said Attorney may do by virtue hereof, and for the consideration above mentioned, do hereby further stipulate and agree that all right, interest, or benefit accruing to me by virtue of an Act of the General Assembly of the State of Illinois, entitled "AN ACT TO EXEMPT HOMESTEADS FROM SALE ON EXECUTION," approved February 11th, A. D. 1851, is hereby waived and released, and any property which I now hold, or may hereafter acquire, which would be exempt from levy and sale on Execution, by virtue of said Act is hereby made subject to such levy and sale, by virtue of this agreement, the same as though such Act had not passed.

WITNESS, my Hand, this

W. A.

day of

October

A. D. 1856.

IN PRESENCE OF

S. P. HodgesSamuel Wood  
J. H. Salisbury

SEAL

SEAL

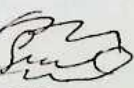
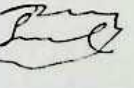
State of Illinois }  
Rock Island County } set

On this 11th day of March  
1887 before me personally came J. P. Hodges subscribing  
witness to the within conveyance to me personally known  
who being duly sworn deposed & says that he resides in the  
Town of Graham in said county, that he knows Timothy Wood  
& J. & S. L. Hargis, the individuals described in & who  
executed the said conveyance, that he was present & saw  
the said Timothy Wood & Hargis & S. L. Hargis, sign said &  
during the same as & for their act & deed & that the said  
J. Wood & J. & S. L. Hargis acknowledged the execution  
thereof whereupon the said J. P. Hodges became the subscribing  
witness thereto. H. C. Farwell, Justice of the Peace.  
Ex Officio J. P. [Signature]

of the State of Illinois entitled "An Act to Exempt Homesteads from sale on execution" approved February 11<sup>th</sup> A.D. 1857 is hereby waived & released & my property which I now hold or may hereafter acquire which would be exempt from levy & sale on Execution by virtue of said Act is hereby made subject to such levy & sale, by virtue of this agreement, the same as though such Act had not passed.

Witness my hand this third day of October A.D. 1856.

In Presence of  
G P Hodges

Timothy Wood   
J H Salisbury 

State of Illinois  
Rock Island County { ss

On the <sup>third</sup> day of March 1857 before me personally came G P Hodges witness to the within conveyance to me known who being by me duly sworn did depose & say that he resides <sup>the holder of</sup> in ~~the~~ <sup>the</sup> ~~holder of~~ <sup>holder of</sup> said county, that he knows Timothy Wood & J H Salisbury the individuals described in & who executed the said conveyance that he was present & saw the said Timothy Wood & J H Salisbury sign and deliver the same as & for their acts & deed & that the said Timothy Wood &

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J H Salisbury acknowledged the execution  
 thereof, Whereupon the said L P Hodges became  
 the subscribing witness thereto

H L Ford Public Magistrate  
 & Ex Officio J. P. <sup>County</sup>

18

On the 19<sup>th</sup> February 1861 after date for value  
received we promise to pay Orlando Childs a order, four  
hundred & sixty dollars

J. M. Wood

(G.)

J. G. Solisbury

I know all men by these presents, that whereas  
I the subscriber am justly indebted unto  
Orlando Childs upon a certain promising  
note, bearing even date herewith for the sum  
of four hundred & sixty dollars made payable  
to the said Orlando Childs or order and  
due February 19<sup>th</sup> 1861 after the date hereof

Now therefore, in consideration of the  
premises, and of the sum of one dollar,  
to me in hand paid, the receipt whereof is  
herby acknowledged, I do hereby make, constitute  
and appoint Orlando Childs, or any attorney,  
of any Court of Record, to be my true and lawful  
attorney, irrevocably, for me and in my name,  
place and stead, to enter my appearance  
before any Justice of the Peace, or in any Court  
of Record, in any of the States or Territories  
of the United States, or elsewhere, either in  
term time or vacation, at any time from and  
after the date hereof, at the Option of the said  
Orlando Childs to receive service of process,  
and confer a judgment in favor of the said  
Orlando Childs, or his assigns or legal representa-  
tives, upon the said note for the above sum.

as far as much as appears to be due,  
 according to the tenor and effect of said  
 note, with interest thereon at the rate of seven,  
 and fifteen dollars Attorney fees. And my  
 said Attorney is authorized in my behalf  
 to file a Cognovit for the amount that may  
 be due, with an agreement therein that no  
 writ of error or appeal shall be prosecuted,  
 nor any bill in equity filed, to interfere in  
 any manner with the operation of any  
 judgment that may be entered by virtue  
 hereof, and also to release all errors that may  
 intervene in the entering of the judg-  
 ment, or issuing execution immediately  
 thereon. Now ratifying and confirming all  
 that my said Attorney may do by virtue  
 hereof, and for the consideration above men-  
 tioned, do hereby further stipulate and agree  
 that all right, interest, or benefit accruing  
 to me by virtue of an act of the General Assembly  
 of the State of Illinois entitled "An act to exempt  
 Homesteads from Sale on Execution" approved  
 February 11<sup>th</sup> A.D. 1837, is hereby waived and  
 released, and any property which I now hold  
 or may hereafter acquire, which would be exempt  
 from levy and sale on Execution, by virtue of  
 said act is hereby made subject to such  
 levy and sale, by virtue of this agreement the  
 same is thought and held not proper  
 Witness my hand this thirteenth day of October A.D. 1856  
 Joseph M. Wood

State of Illinois } p:

Rock Island County, } On this 23<sup>rd</sup> day of March  
 One thousand eight hundred and fifty  
 seven, before me personally came J. P. Hodge  
 witness to the within conveyance to me known  
 who being by me duly sworn does depose &  
 say, that he resides in Indiana in said County,  
 that he knows Smith, Wood & J. G. Salisbury,  
 the individuals described in & the execution  
 said note power of Attorney, that he was  
 present and saw the said Smith, Wood  
 and J. G. Salisbury sign, seal & deliver the  
 same as their act and deed, and that the  
 said Smith, Wood & J. G. Salisbury acknowl-  
 edged the execution thereof.

Whereupon the said J. P. Hodge became  
 the subscribing witness thereto

H. C. Hall Police Magistrate &  
 Ex Officio J. P. *(Signed)*

believe them to be true

H. L. Ford

Police Magistrate  
& Ex Officio J. P.

On the Bill was inscribed  
as follows

To the Clerk of his court least.

Issue Injunction in the above  
case on filing the bill & on  
completing filing Bond  
in the penal sum of Six thousand  
dollars with William H Edwards  
as Security. Injunction to restrain  
further as prayed in Bill  
July 27<sup>th</sup>/1857 J W Drury  
Judge

On this Bill was marked

Filed July 25<sup>th</sup>/1857  
Lebrey McNeil  
Clerk

(Copy Record)  
Eighteenth day March Term Saturday 4/1857

Ploncoo libell  
as  
Timothy Mrocla } confession  
J & Galsbury }

This day came the  
parties by their attorneys, and deposited  
by Johnson their attorney in fact and  
filed. his power of Attorney herein making  
verine of process & releasing all  
Errors that may intervene in entering  
this judgment or issuing execution  
thereon and empowers their said atty  
in fact. to confess judgment against  
them in favor of the Plff. for the sum  
of \$2975.04 Therefore the said  
Johnson atty in fact as aforesaid  
confessed judgment against Defrs in  
favor of Plaintiff for the sum of \$2975.04  
It is therefore ordered by the Court that  
Ploncoo have & record of deposit of the  
said sum of \$2975.04 together with his  
costs expended in this Cause & that he  
have execution therefore

(Copy of Bond Filed)

24

Know all men by these presents,  
That we Timothy Wood, James H.  
Gallagher & Wm. H. Colman, of  
the County of Rock Island & State  
of Illinois are held & firmly  
bound unto Orlando Schild  
of the County of Rock Island &  
State of Illinois in the sum of  
Six Thousand Dollars, lawful money  
of the United States to be paid  
well & truly to the said Orlando  
Schild his executors, administrators,  
& assigns for which payment well  
& truly to be made, we bind ourselves  
and each of our heirs, executors &  
administrators jointly severally & firmly  
by these presents. ~~Sealed~~

Sealed with our seals. Dated this  
18<sup>th</sup> day of July 1857.

The condition of the above  
obligation is such that; Whereas the  
said Orlando Schild did on the 4<sup>th</sup>  
day of April 1857 in the Circuit  
Court of the County of Rock Island  
procure a judgment for two thousand  
& seventy five Dollars & for cost against the  
above named Wood & Gallagher, &

Morcas execution was issued on said  
judgement on the 29<sup>th</sup> day of June  
1857 & Morcas the said Wood & Salisbury  
have filed in the Clerk's office a bill  
in libamery for an injunction  
to restrain from proceeding further  
in satisfying said execution.

Now if the said Wood & Salisbury  
shall prosecute this bill with  
effect & shall pay whatever shall  
be decreed by said Court as shall  
which the decree said Court of  
libamery shall render on the  
hearing or dismissal of said Bill  
for an injunction, then the above  
obligation to be made, otherwise  
to remain in full force & effect.

Signed { Hapty Wood  
J. H. Salisbury  
Wm. E. Clark

This bill is marked "Filed  
July 25<sup>th</sup> 1857"

L. McKim Clerk

Copy of  
Writ of Injunction

26  
State of Illinois & the People of the State of  
Rock Island County - } Illinois To.  
Ezra M. Beardsley & Orlando  
Child.

Greeting

Whereas Timothy Wood and  
J. H. Salisbury have lately exhibited  
their bill of complaint, to the Judge of  
the Circuit Court in & for the County &  
State aforesaid on the libelous side  
thereof against you the said Ezra M.  
Beardsley and Orlando Child defendants;  
wherein among other things, it is alleged  
that you unjustly prosecute the said  
complaint at law touching the  
matters & things therein set forth to wit  
the collection of a certain judgment  
obtained against the said complainant  
by Orlando Child on the fourth day of  
April 1857 for the sum of two thousand  
nine hundred & seventy five <sup>00</sup>/<sub>100</sub> Dollars  
on which execution No. 1605 has issued  
We therefore in consideration of the premises  
do enjoin you the said Ezra M. Beardsley  
& Orlando Child & all & every person  
whom mentioned that you & each of you  
do absolutely & entirely desist from all

further proceedings at law against the said complainant concerning any of the matters in the said bill of complaint complained of. until you & each of you shall appear & fully answer the said bill of complaint at the said court to be holden on the first Monday in September next and the said court shall make other order to the contrary. Hereof fail not under penalty of the law.

Seal

In testimony whereof  
Levin Woodrill Clerk  
of our said court has  
hereunto set his hand  
affixed the seal of said  
Court this 27<sup>th</sup> day of  
July 1857  
Levin Woodrill  
Clerk

In the hearing of said Cause the Exors  
Return of Writ

I have served the within writ of injunction on Ezra M. Bradley by reaching the same and have served the same on Orlando Leland by leaving a copy at his Residence.

H. L. Abbott Clerk

28  
(Copy of Decree)

State of Illinois }  
Rock Island County } Rocks Island Superior Court  
Court of September Term  
J & Salisbury & } A D 1857  
Trinity Mowall }  
vs } In Libam cum  
Orlando Child &  
E M Beardsley }  
These defendants, by

pretentation, and confessing any of the  
matters in & by said bill complained of, to be  
true in manner & form therein set forth.

Generally say, that they are admitted, there is no  
matter or thing in said bill, good & sufficient in  
law to call these defendants to account in this  
Honorable Court for the same, but that there is  
good cause of Damages thereunto, & they do  
deserve accordingly, and for cause of damages  
say, that said bill in case the same were  
true, contains no matter of equity, wherein  
this Court can ground any decree, or give the  
complainant any relief as against these  
defendants. Wherefore & for causes aforesaid, in  
said bill contained & appearing on the face  
thereof, these defendants do demand that & humbly  
crave the judgment of this Honorable Court  
whether they are compellable, or ought to make

any one and the other otherwise than as aforesaid.  
And these defendants humbly pray to be  
have dismissed with their cost & charges  
in this behalf most respectfully sustained.

Witness my hand & seal at

Salisbury Sept 4.

Marked "Filed Sept 21<sup>st</sup> 1857"

Levey Bookbind cloth.

Case was argued at September Term  
of last 1857 & taken in to advisement  
by the Court.

At the December Term of said Court  
on the 26<sup>th</sup> day of December 1857. The Court  
gave this opinion on the matter in controversy  
& by decree did dissolve said writ of  
Injunction & did miss said bill, to  
which there the complaint by the attorney did  
then & there <sup>take</sup> exception & assigner said  
cause for error.

Graham & Probert

Knox & Wilkins

Salisbury Sept 4.

(Copy of Record)

(Decees)

September Term September 26<sup>th</sup> / 1857

|                 |   |               |
|-----------------|---|---------------|
| Finestly Master | } | In showing    |
| J. L. Salisbury |   |               |
| as              |   |               |
| Orlando Childs  |   |               |
| Ezra M. Barasby | } | This day came |

the further, the complainant by  
 Graham & Mebert their Solicitors  
 & the defendant by Wilkerson &  
 Pleasant their Solicitors & will  
 dependent then & there made a  
 motion that the injunction be  
 dissolved & the suit dismissed  
 Whereupon argument was had &  
 the case taken under advisement  
 by the court & the said court had  
 the matter under advisement until  
 the December term of said court  
 but when upon the 26<sup>th</sup> day of  
 said December he gave his opinion  
 of the case & by decree dissolved  
 the injunction & dismissed the  
 suit. Whereupon the complainant  
 by their Solicitors did then & there

say that an Appeal to the Supreme  
 Court be granted from said decree  
 & that the same be assigned  
 for error. The court thereupon ordered  
 that said Appeal be granted upon  
 the complainant's filing satisfactory  
 Bond in the penal sum of Five  
 Hundred Dollars.

(Copy of Appeal Bond)

34

Know all men by these presents that  
we Timothy Wood John & John G. G. &  
William H. Edwards of Rock Island County  
State of Illinois are held a jointly  
bond unto Orlando Leibel formerly of  
Rock Island County State of Illinois. now  
of <sup>comp</sup> Minnesota Territory in  
the sum of Five Hundred dollars good &  
lawful money of the United States to be  
paid to the said Orlando Leibel his  
executors, administrators & assigns for  
which <sup>payment</sup> we bind  
ourselves and heirs executors & administrators  
firmly by these presents.

Sealed with our seals. Dated this 29<sup>th</sup>  
day of December A.D. 1857.

The condition of the above obligation is  
such that whereas the said Orlando Leibel  
died on the 26<sup>th</sup> day of December A.D. 1857  
at the Circuit Court of Rock Island  
County obtaining a decree against the  
above named Timothy Wood & John G.  
G. to disburse an injunction  
to stay proceedings on a certain execution  
issued by the clerk of Rock Island County  
on the 29<sup>th</sup> day of June A.D. 1857  
against the said Timothy Wood & John

I Salisbury & in favor of said Orlando White  
 & to dismiss a certain bill in Chancery  
 to obtain said injunction filed  
 in the Clerk's office of said Court  
 on the 25<sup>th</sup> day of July A.D. 1857 from  
 which decree the said Trinity Mould  
 & John E. Salisbury have taken an  
 appeal to the Supreme Court of the Third  
 Judicial District of this State.

Now if the said Trinity Mould &  
 John E. Salisbury shall prosecute  
 their appeal with effect or shall  
 pay whatever judgment may be rendered  
 by the said court for costs interest  
 & damages then the above obligation  
 to be null & void otherwise to remain in  
 full force & effect.

Signed } Trinity Mould   
 } Wm H Edwards 

This bond was marked filed on  
 the 27<sup>th</sup> December 1857

State of Illinois  
Superior Court 3<sup>rd</sup> District

And now the Appellant by  
their Attorneys come a way  
that they assign for error to  
this Court the full Court of the unit  
that the Circuit Court erred in  
their decree by which they ordered  
the injunction dissolved & the  
Bill dismissed. Pages <sup>32-33</sup> ~~33-34~~  
Graham & Webster

Atty for Appellants

And the said Appellees, come  
and say there is no such error  
in the record and proceedings aforesaid,  
and that they pray may be  
enjoined of by the Court & the decree  
affirmed  
William H. Bryant, atty.

State of Illinois } ss  
Rock Island County } J. Quincy McNeil clerk of the  
Quincy Court in and for said County do hereby  
certify that the foregoing is a true copy of  
all the files in the above entitled Cause  
In Testimony whereof I have  
hereunto set my hand and affixed  
the Seal of said Court this  
15<sup>th</sup> day of April 1858  
Quincy McNeil clk.

Supreme Court }  
3<sup>rd</sup> District } State of Illinois  
The Appellate assigner for error  
the decree of the court below  
by which the injunction was  
dissolved & the Suit dismissed  
as in record paper 32 & 33  
Exhibits  
Attest  
Attest

176

Mr Chancery  
Somerset Wood &  
J. S. Salisbury

vs

Orlando Child &  
E. W. Brandy

Injunction

Filed April 26 1858

Leland

66

W. S. D.

Graham & Webster

## APPELLANT'S BRIEF.

|                                                                                                              |   |                                            |
|--------------------------------------------------------------------------------------------------------------|---|--------------------------------------------|
| Timothy Wood and<br>J. G. Salisbury,<br>Appellants.<br>Orlando Child and<br>Ezra M. Beardsley,<br>Appellees. | } | Appeal from Rock Island Co, Circuit Court. |
|--------------------------------------------------------------------------------------------------------------|---|--------------------------------------------|

Whenever execution shall issue upon any Judgment obtained by confession, or warrant of Attorney, upon any demand which shall not be due at the time of the entering of such Judgment, any defendant or defendants may stay proceedings, by Injunction issued out of the Circuit Court of the County to which such execution shall have been directed, until the said demand shall have become due : PROVIDED, that the party seeking such Injunction, shall give bond as now required by law in cases of Injunction.—*Laws of the 20th General Assembly, 1857. Page 103, Sec. 4.*

This law was in full force and effect at the time said execution was issued, and does not affect any right which was vested in the respondents at the time when it is sought to be enforced.

This law is constitutional as it does not affect the obligation of the contracts.—3 *Scammon*, 268. 4 *Scammon*, 158.

The decision of this Court which permits Judgment to be entered on a note, by virtue of a Power of Attorney, before it becomes due, does not permit execution to be issued until the money shall become due.—*Sherman vs. Baddeley*. (11 Ill's 622.)

A Stipulation in a warrant of Attorney, that error should not lie upon the Judgment, does not preclude the defendant from making such application, nor from prosecuting a writ of error if it is desired.—*Lake vs. Cook*. (15 Ill's 356.)

The same is true if such stipulation contain a provision that no bill in equity be filed. The defendant would be allowed to file such bill.

It is necessary to justice that Courts of Law should possess and liberally exercise an equitable jurisdiction in cases where judgment is entered by confession upon a warrant of Attorney.—*Freeman's Digest*, 979.

Equity would demand that no person be compelled to pay money before it becomes due.

GRAHAM & WEBSTER,  
Solicitors for Appellants.

## APPELLANT'S BRIEF.

|                                                                                                              |   |                                            |
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GRAHAM & WEBSTER,  
Solicitors for Appellants.

196

Wood et al

vs

Child et al

Plt's Brief

ALBANY, N.Y.

Filed May 16 1858

Filed May 16 1858

Leland  
Plt's

Albany, N.Y. May 16 1858

Plt's Brief

Plt's Brief

Plt's Brief

GREEN & WHEELER

Attorneys at Law

## APPELLANT'S BRIEF.

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GRAHAM & WEBSTER,  
Solicitors for Appellants.

Nov 186  
Appellate Brief

Respectfully,  
GEOFFREY W. WHEATLEY

I have the honor to acknowledge the receipt of your letter of the 11th inst. and in reply to inform you that the same has been forwarded to the proper authorities for their consideration.

I am, Sir, very respectfully,  
Your obedient servant,  
GEOFFREY W. WHEATLEY

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Filed May 11, 1858

L. Leland  
Att. Gen.

RECEIVED

## APPELLANT'S BRIEF.

|                                                                                                              |   |                                            |
|--------------------------------------------------------------------------------------------------------------|---|--------------------------------------------|
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It is necessary to justice that Courts of Law should possess and liberally exercise an equitable jurisdiction in cases where judgment is entered by confession upon a warrant of Attorney.—*Freeman's Digest*, 979.

Equity would demand that no person be compelled to pay money before it becomes due.

GRAHAM & WEBSTER,  
Solicitors for Appellants.



Supreme Court      } April Term A.D. 1858  
3rd Gr. Division    }

Timothy Wood & J. G. Salisbury  
Appellants

vs.

Orlando Child & Ezra  
M. Beardsley,  
Appellees

Points for  
Appellees.

Wilkinson & Pleasants  
for appellees.

The Appellants were defeated in a judgment by confession upon notes with warrants of atty, and filed their Bill for an Injunction against the Appellees - the plaintiff in said judgment & the Sheriff to whom execution thereon had been issued - upon the ground, solely, that the notes were not due by their terms, when the judgment was rendered.

It is not pretended that the warrants were obtained by any fraud, - that the notes were without any or adequate consideration, or that for any other reason the plaintiff was not entitled to judgment; the only object of the Bill was to restrain collection by execution until the notes should become due & payable according to their terms.

1. The notes & Warrants of Atty are to be taken together, as one <sup>transaction</sup> ~~Contract~~. They were due for the purpose of judgment, when it was entered; & the plff, having judgment, was entitled to execution, of course.

Baddely vs. Sherman 11 Alb. 622

The reason of the law as stated in that case is illustrated in this; for in fact one of the notes was due (Feb'y 19.) when the judgment was entered (Apr'l 4.), as appears from pages 1 and 3 of the Record. The debts were already in default and the plff thereby justified in enforcing the security he had taken.

2. Courts will not interfere, arbitrarily, with judgments by confession, but require that some more substantial ground be shown for it, than appears in this case.

Lake vs. Cook 15 Alb. 353

& Cases there cited.

3. Execution, being the life of the Law, is to be favored.

Bacon's Abr. Exec. 1<sup>st</sup> Paragraph.

4. The Act approved Feb'y 18. 1857 § 4 (Laws of 1857 p 103.) is not applicable.

The Contract was made in October 1856, the judgment entered on the 4<sup>th</sup> Aprl 1857, and the Act did not take effect until afterwards

1. There is nothing in the Act indicating an intention on the part of the Legislature to give it retrospective effect; & Courts will not so construe a Statute unless such intention so appears.

Thompson vs. Alexander, 11 Ill. 54  
& Cases there cited

The fact that execution had not issued when the Act took effect, is not important; the Statute is not to affect contracts previously made.

Gillmore vs. Shuter 2 Mod. 310, & the Comments on it in Dash vs. VanKleeck, 7 Johns. on pp. 484, 496, 502-3.

2. To subject this Contract to that Act would impair its obligation.

So serious an obstruction to the remedy as provided by law at the time when the Contract was made & the judgment entered, is now held to be within the prohibition of the Constitution.

Kinzie vs. Bronson 1 Howard 311.

McCracken vs. Hayward 2 " 608.

Curran vs. State of Arkansas 15 " 318-19

Harrison vs. Stipp 8 Blackf. 455.

Pearson on Cont. II. p 533.

See also the discussion of this subject & the authorities cited in Sedgwick on Statutory & Constitutional Law pp 639 et seq.

3. The Contract expressly contemplated immediate execution, without interference (p. 11 of the Record), and such a Contract was lawful when it was made.

Baddely vs. Sherman 11 Ill. 622.