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Hunt, impl., etc., v. Tinkham.

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have the effect to destroy the liability under the assignment, which we are not prepared to hold, there is no evidence sustaining such a conclusion in this case.

The bill of exceptions was filed in this case two months and a half after the trial was had, and there was no agreement that it might then be filed, nor was there any order of the court, extending the time for filing the same. This was not filed in time to render it any portion of the record. *Dickhut v. Durrell*, 11 Ill. R. 72. The assignment of errors questions the correctness of the decision in admitting the evidence, and as the bill of exceptions was not filed in apt time, the judgment should be affirmed for the want of a proper bill of exceptions, if for no other. The presumption being that the evidence sustains the judgment.

The judgment of the Circuit Court is affirmed.

*Judgment affirmed.*

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132	155

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BELA T. HUNT, impleaded with O. H. Giles, Appellant, v.  
EDWARD I. TINKHAM, Appellee.

APPEAL FROM COOK.

The statute positively requires that notice of a motion for a change of venue shall be given.

THIS was an action of assumpsit, upon a note and an account.

The defendant filed the general issue, as also special pleas.

On the 16th day of July, 1857, the pleas were filed, verified by defendant. On the 23rd October, 1857, Hunt made application as follows for a change of venue:

To the Hon. John M. Wilson, Judge of the Cook County Court of Common Pleas, of the State of Illinois:

Bela T. Hunt, the above named defendant, respectfully represents that he fears that he will not receive a fair trial of this action in the Cook County Court of Common Pleas, in which this action is pending, on account of Edward I. Tinkham, the above named plaintiff, (the above party,) has an undue influence over the minds of the inhabitants of said county of Cook. Your petitioner further shows that the above fact of undue influence first came to his knowledge on the 22nd day of October, A. D. 1857. Your petitioner therefore prays for a change of venue to some county where the above causes do not exist. Sworn to on the 22nd day of October, 1857.

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Richards et al. v. Hyde et al. Sherman v. Koon et al.

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This application was denied.

There was a judgment for the plaintiff below, and Hunt prayed this appeal.

BARRY & BEVERIDGE, for Appellant.

CLARKSON & TREE, for Appellee.

CATON, C. J. The court properly overruled the motion to change the venue. No notice of the motion was given, and the statute positively requires a notice. It is a misapprehension to say that here no notice could have been given. It is certain that at least one day's notice, could have been given, for the affidavit is made the day before the motion, and there is no excuse shown why notice was not given as the statute required.

The judgment must be affirmed.

*Judgment affirmed.*

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JONATHAN RICHARDS *et al.*, Plaintiffs in Error, *v.* HENRY C. HYDE *et al.*, Defendants in Error; and  
JAMES D. SHERMAN, Plaintiff in Error, *v.* HENRY G. KOON *et al.*, Defendants in Error.

#### ERROR TO COOK.

Circuit courts have not equity jurisdiction, to set aside conveyances, in foreign counties, in aid of executions issued by a Circuit Court of one county to the sheriff of another.

THIS is a writ of error to correct an order of the Cook Circuit Court, dismissing the bill for want of jurisdiction.

The bill of complainants is a bill in aid of execution, stating that the complainants were co-partners, residing in Chicago, in the county of Cook, and as such co-partners, in the term of April, A. D. 1858, recovered, in said Circuit Court, a judgment against Ebenezer Hyde, one of the defendants, for ten hundred and thirty dollars and twenty cents, damages and costs; the proper issuing of an execution, on the 12th day of May, in the year 1858, directed to the sheriff of Winnebago county, the then residence of defendant, Ebenezer Hyde; a proper endorsement and delivery to the sheriff of said county, on the 19th day of said May; that on the 20th day of said May, the sheriff levied upon the interest of said Ebenezer Hyde in certain real estate mentioned in the bill, in said county of Winnebago. Also, the