

## W. &amp; R. LEVISTON v. HIRAM W. FRENCH.

It is within the power of the Court, by special order, to allow depositions, taken in another suit between the same parties, to be read at the hearing of a cause in equity.

## IN EQUITY.

*Marshall & Chase*, for plaintiffs.

*George, Foster & Sanborn*, for defendant.

BARTLETT, J. It is within the power of the court by special order to allow depositions, taken in another suit between the same parties, to be read at the hearing of a cause in equity. 3 Greenl. Ev. secs. 326, 341; *Nevil v. Johnson*, 2 Vernon 447; 2 Dan. Ch. Pr. 1011; 2 Chitt. Eq. Dig. 990. The subject matter of this cause is the same as that in a suit of law brought by French against W. & R. Leviston, which is still pending. In that cause the present plaintiffs had taken the depositions of John Field, John Osborn and Hiram W. French, and the present defendant had appeared at the caption. The plaintiffs now move for leave to use those depositions in this cause. The subject matter of the two causes is the same, the same claims are in question, the parties are the same, and the present defendant had full opportunity to cross examine the witnesses; and we think that under the circumstances the motion should be granted. The defendant may, if he desires, take the further depositions of these witnesses.

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 GEORGE A. BARNES & A. v. UNION M. F. I. CO.

The omission in an application to a mutual insurance company for insurance, to mention an existing policy in the same company, does not render the policy void, but the policy will be confirmed by the assent of the directors to a transfer of the policy, all the facts appearing on their records.

Notice of loss will not be rendered ineffectual by the omission to mention that the debt of the assignee, as mortgagee, was also secured on other property.

Where property insured is conveyed, and the policy is assigned with the assent of the directors of the company, an assessment made against the original assured, and notice to him, will not cause a suspension of the policy, in case of non-payment. The assignee, after the assent of the directors, is the party entitled to notice.

Notice of loss given by the assignee, is sufficient in such case.

The agent, by whom an insurance is obtained in his own name for the benefit of another, may maintain an action upon it.

Where a promise is made to one sustaining the character of a trustee, he is the proper person to bring an action.

By the assent of the directors to an assignment of a policy to a mortgagee of the property, the assignee becomes a member of the company, and may sue in his own name, where the by-laws allow such assent to be given.

ASSUMPSIT, by the plaintiffs, as assignees of a policy of insurance, for \$2000 on a dwelling house in Nashua.