

CASES

DETERMINED IN

THE SUPREME COURT

OF

NEW HAMPSHIRE.

GRAFTON. DECEMBER, 1885.

LOWD *v.* BOWERS.

A caption of depositions may be adjourned by the magistrate to a place other than that named in the notice, when the sickness of the witness renders such a course necessary in order to obtain the deposition.

A caption of depositions by the plaintiff was notified for April 2, 1885, at the office of Burleigh & Adams. On that day the witness, who was the plaintiff herself, was unable by reason of sickness to attend at the place named, and the magistrate adjourned the caption to her residence a short distance away, and her deposition was there taken. The defendant did not appear either at the office of Burleigh & Adams, or at the plaintiff's house. The deposition was admitted at the trial, and the defendant excepted.

Burleigh & Adams, for the plaintiff.

Page & Story, for the defendant.

ALLEN, J. The defendant was duly notified of the time and place for taking the deposition, and did not attend, and was not present at the time of adjournment, nor at the caption. The inability of the witness to attend at the place named in the notice was an exigency which made an adjournment necessary to save the caption. If the defendant had appeared at the time and place notified he would have had notice of the adjournment, and oppor-

tunity to attend at the place of caption. The defendant not appearing according to the notice, and having opportunity to attend at the place to which the caption was adjourned for an unforeseen exigency, was not harmed by the admission of the deposition, and cannot now object.

Exception overruled.

SMITH, J., did not sit: the others concurred.

PERHAM v. THE HAVERHILL FIBRE CO. § a.

It will be ascertained at the trial term whether there are persons not made plaintiffs in a bill in equity who will be affected by the decree, and if so such persons may be there joined.

A bill in equity may be maintained by an attaching creditor to remove the cloud of a tax deed upon the title of real estate of the debtor which he has attached.

BILL IN EQUITY, to remove a cloud upon the title of two parcels of land in Haverhill, created by tax deeds thereof dated February 6, 1885. Facts found by the court.

April 1, 1883, the premises in question were owned by a voluntary corporation called the Haverhill Fibre Co., which had its principal place of business in Haverhill. Having knowledge of the above facts, the selectmen put the premises into the non-resident list, and they were afterwards sold and deeded by the collector to the defendant Pike for the tax of 1883 so assessed on them. The interest of the plaintiff in the premises is that of an attaching creditor of the Fibre Co. The plaintiff is described as trustee of the Haverhill Pulp Co. The defendants objected that the plaintiff's *cestuis que trust* should have been joined as plaintiffs in the bill.

Chase & Streeter and *S. T. Page*, for the plaintiff.

Bingham, Mitchells & Batchellor and *Geo. W. Chapman*, for the defendants.

ALLEN, J. The defendants object to a decree, upon the ground that other parties interested in the merits of the proceeding have not been joined as plaintiffs. It will be ascertained at the trial term whether or not there are other persons whose interests would be affected by a decree; and if that be found, they can be joined as parties.

64	2
69	135
64	2
170	237