

nor ordinarily will inquire, whether a witness be a Protestant or Romanist, Trinitarian or Unitarian, a Shaker, Mormon, Jew, or Gentile, a Spiritualist or a Materialist. Defect of religious faith is never presumed.

The question whether a person is disqualified to testify by want of belief in God and punishment for perjury, is a question of fact for the determination of the presiding judge,—in this case, the referee. *Com. v. Hills*, 10 Cush. 530, 532; 1 Gr. Ev., ss. 369, 370, and notes; *Best Principles of Ev.*, s. 161.

The range of the cross-examination was regulated by the discretion of the referee; and that discretion is not a matter for our revision. *Gutterson v. Morse*, 58 N. H. 165. If in any case the court will revise the ruling of a trial judge upon the question of the competency of a witness, as affected by his religious belief, there is no occasion for such revision in the present case.

Exceptions overruled.

DOE, C. J., did not sit: the others concurred.

TABOR & *a.* *v.* HARRIMAN.

A purchaser of logs, who pays a debt of the vendor secured by a lien on the logs, may set up his compulsory discharge of the lien, or the partial failure of title in reduction of damages, in an action brought against him by the vendor for the price.

ASSUMPSIT, for a balance due for logs sold. Facts found by a referee.

The plaintiffs agreed to sell and deliver to the defendant, in Connecticut river, below the mouth of Indian Stream, 150,000 feet of spruce logs,—the defendant to deliver to one Vandyke, at the same place, a large amount of similar logs; and it was understood by the plaintiffs that Vandyke, under his contract with the defendant, was to have their logs. The logs were delivered upon the banks of Indian Stream, and driven by Vandyke to the place of delivery in the Connecticut river. The plaintiff employed Vandyke for a reasonable compensation to drive the logs to the place of delivery; and when Vandyke settled with the defendant, he retained \$68.66, which was a reasonable compensation for driving them. Vandyke retained possession of the logs continuously, and claimed a lien on them for driving. This suit is brought to recover the \$68.66 retained by Vandyke.

Dudley, for the plaintiffs.

Aldrich & Parsons, for the defendant.

STANLEY, J. Vandyke had a lien on the logs for driving them. 2 Kent Com. 635, and notes; *Jacobs v. Knapp*, 50 N. H. 71, 76. That lien the defendant was compelled to discharge before he could have the plaintiffs' logs to apply on his contract with Vandyke. Having discharged it, the amount paid for that purpose was money paid, laid out, and expended for the plaintiffs, and was proper matter of defence against their claim for pay for the logs. Upon the facts stated, the defendant is entitled to

Judgment on the report.

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

PARSONS *v.* MERRILL.

Money placed by A in the hands of B to be used in the purchase and location of government lands at government price, in the joint names of A and B, must be accounted for at the price actually paid for the land, though it was less than government price.

A placed in the hands of B \$2,000, to be used in the purchase and location of government lands at government price, B agreeing to pay A five per cent. interest annually, and \$1,000, and one half the proceeds of the lands when sold. B expended \$1,800 in the purchase and location of lands under this agreement;—*Held*, that A was entitled to recover the interest on the sum invested at the end of each year, even though the lands had not been sold.

DEBT, upon a contract under seal. Pleas: I, *Nil debet*; II, Satisfaction; III, Set-off. Facts found by a referee.

The defendant furnished the plaintiff \$2,000, to be used in the purchase and location of government lands at government price. The defendant was to be a joint tenant with the plaintiff in the lands, and to have one half the gain, income, and avails of the land at all times, and, when sold, one half the proceeds. The defendant was to pay one half the taxes on the land until sold, and to pay the plaintiff five dollars yearly toward the expense of taking care of the land. The plaintiff was to locate the land at his own expense, pay one half the taxes, take charge of the lands, and pay the defendant when the lands were sold \$1,000, being half of the original fund, and five per cent. annually on the \$2,000, and to have one half of the avails of the land when sold.

The lands were to be located in the names of both parties; and