

town-meeting is, that by their interest in it they are peculiarly qualified to decide it. And, in many cases, the more direct and exclusive their interest, the more reason there is supposed to be for delegating to them the power of legislation. The power of taxation for local purposes is to a certain extent committed to them, because, of all men legally capable of exercising it, they have or are presumed to have the greatest personal concern in its exercise as payers of town taxes, and as persons benefited by their expenditure. A tax-payer, voting for or against a proposition to raise money for the public use of his neighbors and himself by a tax assessed upon them and him, votes upon a question of his own interest; and he can vote in the negative on the ground that the tax will take money out of his pocket, or in the affirmative on the ground that the use to which the tax is to be applied will increase his estate. And voters may be governed by similar motives in their decision of other questions of municipal monetary affairs, including the question of prosecuting such suits as this. The defendant's tax-paying neighbors are, in a certain practical sense, parties in interest in this suit. Those whose names are on the check-list can vote to carry on the suit or to drop it, according to their view of their own advantage or disadvantage. Legislative power on the subject is delegated to the voters of Dorchester because of their interest in it. And when the defendant's neighbors are allowed to vote on the question on account of their interest, he is not forbidden to vote on account of his interest. The contrary doctrine would allow them to vote for a tax on the ground that it would make them richer, and forbid his voting against it on the ground that it would make him poorer. The defendant's motion should be granted.

*Case discharged.*

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

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GEORGE v. FELLOWS.

A referee's report may be sustained notwithstanding statements of irrelevant facts made by counsel at the trial, when it clearly appears that the report is according to the evidence and that no injustice has been done.

On the question whether a horse is exempt from attachment, evidence as to the situation, circumstances, employment, and needs of the debtor and his family is competent.

TROVER, for a horse. Plea, that the defendant attached it on *mesne* process against the plaintiff; replication, that it was required

for farming or teaming purposes, or other actual use. Reported 59 N. H. 206. The issue was tried by a referee, who found for the defendant, and reported the following exceptions taken on the trial before him. At the hearing the defendant's counsel stated that the case had been once tried, and there was a verdict for the defendant, but it had been set aside. This statement was objected to by the plaintiff, and an exception taken. The horse was attached Feb. 27, 1878. The plaintiff was at that time superintendent of the Grafton county farm. As bearing on the question whether the horse was exempt from attachment, the defendant, subject to the plaintiff's exception, was allowed to show by one Pattee and one Smith, who were county commissioners while the plaintiff was superintendent, that no restrictions were put on the plaintiff in regard to using the county horses for his own business; that the plaintiff did not keep a horse there at the request of the commissioners; that the plaintiff had no occasion, so far as they knew, to keep a horse for his own use, and that three horses were sufficient to do the farm work. It appeared without objection that three horses were kept there by the county. Subject to the plaintiff's exception, the defendant was allowed to state what directions he gave in regard to feeding the horse after the attachment. This evidence was received to rebut the plaintiff's claim that the horse was improperly kept, and was depreciated in value after it was attached.

*S. B. Page and Bingham, Mitchell & Batchellor*, for the plaintiff.

*G. F. Putnam*, for the defendant.

STANLEY, J. The statement of the defendant's counsel that there had been a trial and a verdict for the defendant, was irregular and improper. *Hilliard v. Beattie*, 59 N. H. 462, 465, and authorities there cited. But whether it would invalidate the report if it did not appear that no injustice was done, is a question not necessary to be considered. A report in favor of the plaintiff would not have been according to the proof. The evidence upon which the referee found that the horse was not required for the plaintiff's use satisfactorily establishes that fact, and shows that no wrong is done by the report, and that justice requires a judgment for the defendant. *Adams v. Bushey*, ante 290.

The issue tried was whether the horse was required by the plaintiff for actual use, and this was to be determined upon evidence; and on this question the situation and circumstances of the plaintiff and his family, their employment and needs in this respect, were material. Pattee and Smith had knowledge of these facts, and their testimony in regard to them was properly admitted.

The finding of the referee for the defendant renders the exception to the admission of the testimony as to the manner in which

the horse was kept immaterial. This evidence related to the question of value and damages.

*Judgment on the report.*

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

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DAVIS v. DYER & a.

In a suit against the trustees of a family of Shakers, the plaintiff is a competent witness, although a former trustee with whom the business which is the subject-matter of the suit was transacted is dead.

In the trial of a suit against a principal, the plaintiff's books, showing that the items sought to be recovered are charged against the agent, are competent, if it is shown that the charges are in fact on the principal's account.

A claim for manufacturing cloth, for work and labor, and for board, may be recovered under counts for work done and materials provided, and for goods sold and delivered.

ASSUMPSIT, to recover a balance of account. The declaration is for goods, wares, and merchandise bargained and sold, sold and delivered; for work done and materials provided; for money lent, paid, laid out, and expended; for money had and received, and interest.

The action is brought by Davis, surviving partner of the firm of Davis & Conant, against the defendants as trustees of the Church Family of Shakers. Caleb M. Dyer, for many years prior to his death, was trustee of the Church Family, and the business between the plaintiff and that family was almost exclusively transacted with Dyer. He died in 1863.

The plaintiff, subject to the defendants' exception, was allowed to testify generally as to transactions and conversations with Dyer, and he introduced the books of account of the firm. The entries offered were made against C. M. Dyer. The defendants objected that the entries did not sustain the items in suit. It did not appear and was not claimed that the plaintiff had any dealings with Dyer except in his capacity of trustee.

The defendants excepted to the ruling that the plaintiff could recover several items for manufacturing flannel, and for work and labor, because there was no count in the writ for labor exclusively; also to the ruling that the plaintiff could recover for board, there being no count in the writ for board.

*S. C. Eastman* (with whom were *Mugridge* and *H. Bingham*), for the defendants.