

ready for hearing, and the attorneys of the parties having been fully heard, the proceedings were read and considered.

The evidence here relied on to contradict and discredit the testimony of the witnesses who have been produced to prove the marking of this black oak as a boundary, is founded on a presumption, derived from what is alleged to be the regular course of nature in the growth of forest trees. I have met with no instance, in the books, in which proof of this kind had been received and respected in a court of justice.

A presumption is an inference as to the existence of a fact, not actually known, arising from its usual or necessary connection with others which are known. (a) The whole force of the presumptive evidence, here offered, rests, therefore, upon the fact of the alleged regular and invariable course of nature in the formation and growth of trees, being well known; or at least, on its being susceptible of, or having been clearly established by proof. For, if the course of vegetation, in this particular, be irregular, unknown, or on any account incapable of proof, then no inference can be deduced from it worthy of any consideration whatever as evidence. The point then to be here determined is, whether, in the growth of trees, a concentric layer of wood under the bark is a regular and invariable annual formation or not? This is a question involving an inquiry into the physiology of forest trees, which merits a most careful consideration.

The law respects the regular course of nature in every way; and, consequently, in all cases, in so far as the course of nature is known, all such facts, as well in regard to the revolution of the seasons, as to animals and vegetables; as the mating of birds, and their co-operation in rearing their young, the blooming time of roses, and the like, are received as being in themselves, entirely trustworthy; or as facts from which inferences as to the truth of other facts may be safely drawn. (b) In questions of bastardy, the time of access being proved, the known term of gestation, reckoning from the time of birth, is always received as a most satisfactory kind of presumptive evidence. (c) So too, in all the various questions in relation to the right of property, connected with a continuance of life, facts, so far as they are known, in regard to the

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(a) 1 Stark. Evid. 23.—(b) Co. Litt. 40, 92, 197; 1 Stark. Evid. 472, note; 4 Stark. Evid. 1244; The case of Swans, 7 Co. 89.—(c) Co. Litt. 123, b. note; The King v. Luffe, 8 East. 193.