

But Patterson and Ellicott, to impeach the testimony of the witnesses produced by M'Causland to prove the call for the marked black oak, the going to which brings those two elder tracts together, and closes the access to M'Causland's First Attempt, shew that the black oak, of which the witnesses speak, is that which is designated as a marked black oak in the certificate of Jolly's First Attempt, bearing date in the year 1791; and that in a block, so cut out of that tree as to include the whole of the only chop mark upon it, there appears to have been added, by natural growth, only twelve concentric layers of wood outside of, and since the chop mark was made. They exhibited this block to the Court as evidence; alleging, that according to the regular and uniform course of nature, there is in all trees one such concentric layer of wood always formed every year. And, therefore, they contended, that the irresistible presumption was, that the black oak, shewn by those witnesses, upon the resurvey, could not have received the chop mark so long ago as the year 1791, when the tract called Jolly's First Attempt was laid out; and consequently, could not be the marked black oak called for in the certificate of that tract; and that call being thus clearly disproved, the lines of that tract must, so far, be laid down by course and distance; and in that mode of locating it, there would be left a considerable space of vacancy along which the resurvey of Litten's Fancy might be extended, as it had been, so as to take in the whole of the tract called M'Causland's First Attempt.

71 BLAND, C., 3d December, 1830.—This case standing * 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. 1 *Stark. Evid.* 23. 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