

probability, the expectation, and the average duration of human life, have always been, in like manner, admitted as evidence; or, as a ground from which presumptive evidence of the existence of other facts may be fairly deduced. (d) And there can be no doubt, that the regular and known course of nature in the formation of vegetables may be as safely relied on as direct, or as presumptive evidence, as in that of animals. The only point of difficulty, as to both, being the establishment of the truth of that which is alleged to be the uniform and regular course of nature.

Little seems to be known as to the duration of the lives of trees of any kind; and yet, as a man may have an inheritance in fee simple, in lands as long as such tree shall grow; (e) it might become as important to ascertain the expectation of the life of such a tree, in order to set a present value upon such a base fee, as to ascertain the expectation of the life of a *cestui que vie*, for the purpose of putting a present value upon an estate for life. The olive tree, so highly valued for its fruit from the most remote ages to the present time, is said to be remarkable for its longevity. The ancients limited its existence to two hundred years, but modern authors assert, that, in climates suited to its constitution, it survives its fifth century. (f) But it is believed, that few of the common fruit trees of our country, apple, pear, or cherry, live to an hundred years of age.

By the common law of England, where the owner of a forest, in which others had a right of common for their cattle, felled the timber trees, he was allowed to inclose it so as to exclude such commonable cattle for three years thereafter, to prevent them from browsing and eating down the young spring before it had grown up beyond their reach; which term of inclosure was, by a statute passed in the year 1482, extended to seven years, for the more effectual preservation of the young growth; (g) which new growth, it has been held in England, will attain a sufficient size to be cut as timber fit for many uses at twenty years of age. (h) But the plantations which have been made in modern times, in England, so

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(d) *Doe v. Jesson*, 6 East. 84; *Doe v. Griffin*, 15 East. 293; *Doe v. Deakin*, 6 Com. Law Rep. 476.—(e) *Richard Lifford's case*, 11 Co. 49; *Ayres v. Falkland*, 1 Ld. Raym. 326; Com. Dig. tit. Estates by grant, A. 6; 2 Blac. Com. 109.—(f) 2 *Michaux Amer. Sylva*, 57.—(g) 22 Ed. 4, c. 7; *Sir Francis Barrington's case*, 8 Co. 271; 6 Jac. Law Dic. 450 v. Wood.—(h) 35 Hen. 8, c. 17; 13 Eliz. c. 12, F. N. B. 59; 2 Inst. 642; Bac. Abr. tit. Tythes, C. 4; *Richard Lifford's case*, 11 Co. 47; 2 Mich. Am. Sylva, 144.