charged the prisoners with having published as true "a certain false, forged, and counterfeited paper, *purporting* to be a bank bill of the United States for ten dollars, *signed* by Thomas Willing, president, and G. Simpson, cashier." And because the statute relating to the charge set forth in the indictment is inconsistent, repugnant, and void. In this statement, the words signed and purporting are italicized, and the court may have held the indictment bad because the former word was used, thus sustaining the objection made in *Rex* v. *Birch and Martin*. Or it may have held that the language of the indictment amounted to an averment, that the bill charged to be forged was signed in fact by the president and cashier of the bank, in which case it could not have been a forgery. Or it may possibly have thought that under the peculiar language of that statute, which differs materially from the one under consideration, they were bound to hold it void for repugnancy. However that may be, we do not consider the case, as it is reported, an authority for holding the statute void which we are called on to construe.

To the first and third questions, and the first branch of the second, we answer, No.

To the fourth and fifth, and the second branch of the second, we answer, YES.

INSURANCE COMPANY *v.* WEIDE.

1. On a suit on a policy of insurance against loss of a stock of groceries in process of retail sale, by fire, it is competent, in the absence of trustworthy books and of specific evidence by persons other than the plaintiffs themselves, to show by witnesses in the town where the fire occurred, engaged in the same business with the plaintiffs, and whose annual sales were as large, that grocery merchants in that city for the six years prior to the fire had not carried, or had on hand at any one time, more than one-fifth of their annual aggregate sales, and that this was the case on the day the fire occurred. In other words, to show by the general course of trade in that branch of business in the town that

Statement of the case.

the plaintiffs' loss could not have exceeded $24,000, if their sales during the year amounted to only $120,000.

2. But the witness can testify only to his personal experience on the subject. He cannot be asked what "the course of trade" was in regard to this particular business.

ERROR to the Circuit Court for the District of Minnesota; the case was thus:

In October, 1866, the Home Insurance Company insured, for the term of one year, against fire, a stock of groceries and other merchandise owned by C. & J. Weide, and which were contained in a storehouse occupied by them in the city of St. Paul. In February, 1867, the storehouse and its contents were burnt, and this suit was brought to recover for the loss of the stock of goods. At the trial the main question in issue was the extent of the loss. As most of the books were destroyed, and the defendants had introduced evidence tending to show that those which were not burned were not to be depended on, and afforded no data from which the value of the goods on hand at the date of the fire could be ascertained, or the extent of loss determined, the case rested chiefly on the testimony of the plaintiffs. They swore that their sales during the year preceding the fire were about $120,000, and that the goods on hand at the time of the fire were worth, at their cost value, $65,000.

The defendants insisted, on the basis of the sales, that the loss was greatly overstated, and, as one means of proving it, offered to show by witnesses in St. Paul, engaged in the same business with the plaintiffs, and whose annual sales were as large as theirs, that grocery merchants in that city for the previous six years had not carried, or had on hand at any one time, more than one-fifth of their annual aggregate sales, and that this was the case on the day when the fire occurred. In other words, they wished to show by the general course of trade in that branch of business in St. Paul, that the plaintiffs' loss could not have exceeded $24,000, if their sales during the year amounted to only $120,000.

The court refused to allow the evidence to go to the jury,

and the correctness of this ruling was the only point in the case which it was necessary here to consider. In the course of the trial, however, the defendant asked a witness this question:

"Supposing that the plaintiffs' sales were $120,000 for the year preceding the fire, as grocery merchants, what average amount did they carry or have on hand during such year, *according to the general course of business?*"

And on objection made to it, some discussion took place below on the correctness of that question.

Mr. E. A. Storrs, for the plaintiff in error; Mr. W. H. Peckham, with a brief of Mr. L. Allis, contra.

Mr. Justice DAVIS delivered the opinion of the court.

Although we agree with Lord Ellenborough, "that the rules of evidence must expand according to the exigencies of society,"* yet it is not necessary to introduce any innovation upon these rules in order to hold that this evidence should have been admitted. It is true there are no reported cases on the subject, but on principle its admissibility can be sustained.

It is well settled that if the evidence offered conduces in any reasonable degree to establish the probability or improbability of the fact in controversy, it should go to the jury. It would be a narrow rule, and not conducive to the ends of justice, to exclude it on the ground that it did not afford full proof of the non-existence of the disputed fact. Besides, presumptive evidence proceeds on the theory that the jury can infer the existence of a fact from another fact that is proved, and most usually accompanies it.† Many of the affairs of human life are determined in courts of justice in this way, and experience has proved that juries, under the direction of a wise judge, do not often err in the reasoning which leads them to a proper conclusion on such evi-

* Pritt *v.* Fairclough, 3 Campbell, 306.

† Hart *v.* Nev land, 3 Hawks, 122.

dence. And if they should happen to reach a wrong conclusion, the court has in its own hands the mode and measure of redress. In the nature of things, the officers of the insurance company were unable, by any direct proof, to contradict the testimony of the plaintiffs as to the value of the goods destroyed. If the loss were an honest one it was their duty to pay it, but if they had good reason to believe it to be exaggerated, it was equally their duty to refuse to pay it. As they had no direct evidence to produce bearing on the subject, they offered to prove a fact which, uncontradicted and unexplained, would lead the jury to the conclusion that the plaintiffs had overvalued the property destroyed by fire. It was neither opinion nor hearsay which they tendered to the court, nor was it a usage of trade they wanted to prove, but a matter of fact concerning the business in which the plaintiffs had been employed, which would render it extremely improbable that they had sustained the loss they claimed to have suffered. The plaintiffs testified when the fire occurred the stock in their store was worth over sixty thousand dollars, and yet their sales during the year were only double that amount. The defendants said this could not be so, because the merchants of St. Paul, engaged in a like business, and to the same extent, did not at that time, nor at any other time during the preceding six years, have on hand on the average more than one-fifth of their annual aggregate sales.

If this state of case could be proved by the united testimony of this class of merchants, it would establish a fact connected with this kind of business, to wit, the uniform relation between the stock on hand and the annual sales, from which the existence of another fact could be reasonably inferred, which is, that the business of the plaintiffs rested on the same basis and was governed by the same rule of uniformity. Indeed, so strong would be this inference, that in the absence of any attempt to explain or contradict the evidence, the jury would be justified in adopting the conclusion which it tended to prove. A presumption is an inference as to the existence of a fact not actually known, arising from its

usual connection with another which is known, and on this principle the jury should have been allowed to consider this evidence.

As this case will have to go back for a new trial, and as the point was raised in the court below, it may be proper to observe that no witness can be asked what the course of trade is in reference to this particular business. This would be either opinion or hearsay. He can only be allowed to tell his personal experience on the subject about which he is called to testify. It is only through the aggregated testimony of all the witnesses that the fact can be proved, which so connects itself with the plaintiffs' business as to require from him an answer.

JUDGMENT REVERSED, AND A VENIRE DE NOVO.

MEADER ET AL. v. NORTON.

1. Nothing more is contemplated by proceedings under the act of Congress of March 3d, 1851, to ascertain and settle private land claims in California, than the separation of lands owned by individuals from the public domain. A decree confirming a claim to land rendered in such proceedings, even when followed by a patent of the United States, is not conclusive upon the equitable rights of third persons. They can assert such rights in a suit in equity against the patentee and parties claiming under him with notice.
2. In a suit at law a patent is conclusive evidence of title against the United States and all others claiming under the United States by a junior title. Until the patent issues the fee is in the government, but when it issues the legal title passes to the patentee. Persons therefore claiming the land against the patent cannot have relief in a suit at law, but courts of equity have full jurisdiction to relieve against fraud or mistake, and that power extends to cases where one man has procured the patent which belonged to another at the time the patent was issued.
3. In 1839 three sisters obtained from the governor of the Department of California a grant of land, which was approved by the Departmental Assembly, and official delivery of possession was given to them. Some years afterwards the husband of one of the sisters, named Bolcoff, suppressed or destroyed this grant and fabricated a pretended grant to himself of the land, and also certain other papers intended to prove the