Presumptions.

LINCOLN and others *v.* FRENCH. In error to the circuit court of the United States for the district of California. This case was determined in the supreme court of the United States at the October term, 1881. Mr. Justice *Field* delivered the opinion of the court, reversing the judgment of the circuit court, and remanding the cause, with directions to enter judgment in favor of the plaintiffs in error.

Although a duty to reconvey land conveyed for the purpose of building a railroad arose when, by the terms of the trust deed, the time had passed within which the work was to be done, and the conditions upon which the trust was to be executed had become impossible, a reconveyance was to be presumed only in the absence of proof to the contrary. Like other presumptions, it is sufficient to control the decision of the court if no rebutting testimony is produced. But all presumptions as to matters of fact, capable of ocular or tangible proof, such as the execution of a deed, are in their nature disputable. No conclusive character attaches to them. Presumptions are indulged to supply the place of facts, but they are never allowed against ascertained and established facts. When these appear, presumptions disappear.

J. H. McKune, A. T. Britton, and J. H. McGowan, for plaintiffs in error.

John Reynolds and S. O. Houghton, for defendant in error.

Admiralty—Jurisdiction—Maritime Tort.

LEATHERS *v.* BLESSING, U. S. Sup. Ct., Oct. Term, 1881. Appeal from the circuit court of the United States for the district of Louisiana, decided in the supreme court of the United States, May 8, 1862. Mr. Justice *Blatchford* delivered the opinion of the court, affirming the decree of the circuit court.

Where the master and officers of the vessel, just arrived and moored to the wharf, were accustomed to permit persons expecting to find on the vessel freight consigned to them, as soon as she had landed and her gang-plank run out, to go on board of her to examine the manifest, or transact any other business with her master or officers, and libelant went on board to ascertain whether a consignment of cotton seed had arrived on her, under such circumstances the relation of the master and of his co-owner, through him, to libelant is such as to create a duty on them to see that libelant is not injured by the negligence of the master; and if he is injured by a bale of cotton being negligently allowed to fall on him, it is a maritime tort, and cognizable in admiralty.

J. G. Carlisle, for appellant.

Durant & Hornor, for appellee.

Cases cited: Waring v. Clark, 5 How. 441; Phila., W. & B. R. Co. v. Phila., etc., Co. 23 How. 209.

WEBBER *v.* BISHOP and another.

(Circuit Court, N. D. New York. 1882.)

REMOVAL OF CAUSE—CONDITONS IN BOND.

It is essential that the bond contain a provision for the payment of costs, and the objection that it does not may be taken at any time.

James Wood, for motion.

George Truesdale, opposed.

COXE, D. J. This action was commenced in the supreme court of the state of New York. In June last, proceedings to remove it into this court were taken. This motion is to compel the treasurer of Monroe county to pay to the plaintiff the sum of $250, deposited as security for defendants' costs, pursuant to an order of the state court. Opposition is made solely on the ground that the cause was not properly removed. Various alleged irregularities are pointed out, only one of which will be considered. The bond filed with the petition of removal in the state court was drawn pursuant to section 639 of the Revised Statutes; it does not contain the provision as to costs required by section 3 of the act of 1875.

The defendants contend that this is a fatal omission, affecting the jurisdiction of this court; that it is not a mere irregularity, or a defect that can be cured by amendment.

The case of *Torrey* v. *Grant Works*, 14 Blatchf. 269, clearly sustains this view. In his opinion Judge Blatchford says, at page 270:

"The limitation of time within which the petition may be filed, and the fact that, under section 639, it may be filed at a later period than it can be under the act of 1875, has nothing to do with the character of the bond. The present suit is one which falls within the provisions of section 3 of the act of 1875, in regard to the terms of the bond required. It is a suit at law of a civil nature, brought in a state court, in August, 1875. The matter in dispute exceeds, exclusive of costs, the sum or value of $500, and it is a suit in which there is a controversy between citizens of different states. It is, therefore, a suit mentioned in section 2 of the act of 1875, and one of the parties to it has undertaken to remove it by filing his petition for removal in the state court. He may be in time, because within the time limited by subdivision 3 of section 639, although not within the time limited by section 3 of the act of 1875; but, even if he claims the benefit of the longer time allowed by section 639, he must give the bond prescribed by the act of 1875. He has not given such a bond. The bond he filed contained no provision for costs."

The learned judge further held, following a decision of Judges McKennon and Cadwalader, (9 Chi. Leg. News, 324,) that the require-