

such also was the rule of the ancient Danish law. But the common law, which governs us, knew no such arbitrary presumptions. By that law, where several lives are lost in the same disaster, there is no presumption of survivorship by reason of age or sex, nor is it presumed that all died at the same moment. Survivorship in such a case must be proved by the party asserting it. No presumption will be raised by balancing probabilities that there was a survivor, or who it was. *Wing v. Angrave*, 8 H. L. Cas. 183; *Underwood v. King*, 4 De Gex, M. & G. 633; *Johnson v. Merithew*, 80 Me. 111; *Newell v. Nichols*, 75 N. Y. 78; 1 Greenl. Ev., §§ 29, 30; Best Ev. 304; 2 Whart. Ev., §§ 1280-1282; 2 Kent. Com. 572. It was held, therefore, that where the member of a benefit association, whose certificate is payable to his wife, or in case of her death in his life-time, to his children, or if there be no children, to his mother, and if she be dead, to his father, and failing all these, to his brothers and sisters, perishes in a flood with his wife and children, there is no presumption as to survivorship, but the widow's representative is entitled to the fund, in the absence of evidence that she predeceased her husband.

### SUPERIOR COURT.

SWEETSBURG, Dec. 20, 1890.

Before LYNCH, J.

BOOTH et al. v. HUTCHINS.

*Principal and agent—Sale—Action by undisclosed principal—Acceptance or receipt, Proof of—Agent acting in his own name—Art. 1716, C.C.*

- HELD:—
1. *Where goods are sold by a person acting for himself and for others whose names he does not disclose to the purchaser, the undisclosed principals as well as the one who appeared in the contract, may sue jointly in their own names to recover the price.*
  2. *The acceptance or receipt of the goods, or part thereof, by the purchaser, may be proved by parol evidence.*
  3. *Where the defendant offered a price for goods, which was accepted, and the goods were then shipped in his name to an address indicated by him to the vendor, possession of the goods was thereby vested in the defendant, and he*

*will be deemed to have accepted and received the same.*

4. *The fact that the defendant gave the vendor the address of a person to whom the goods were to be shipped, and that the vendor shipped the goods as instructed, and afterwards endeavoured to obtain payment from the person to whom they were shipped, is not a sufficient disclosure of principal to relieve the defendant from personal responsibility for the price.*

LYNCH, J.:—

The plaintiffs—seven in number—as patrons of a cheese factory situated in the township of Shefford, and known as “the Willow Grove cheese factory,” sue defendant to recover, in the respective proportions mentioned in their declaration, the sum of \$537.94, being for the price of 86 boxes of cheese which they allege were sold by them to defendant about the 1st November, 1889, at the rate of 10½ cents per pound; that the cheese were duly delivered to defendant after being weighed and counted,—and that he specially promised to pay for them.

Defendant meets the action by a general denial, and then in a second plea alleges that he never personally bought said cheese, or represented that he was so buying them, or ever personally undertook to pay for them; that to the knowledge of plaintiffs there has existed for many years a custom, by which the large dealers in cheese in Montreal employ to buy for them, local men, who act simply as their agents; that defendant who keeps a small general country store was, to the knowledge of plaintiffs, employed in the season of 1889, to buy cheese on commission for Charles Boden & Co., of Montreal, dealers in cheese; that about the date mentioned in plaintiffs' declaration, defendant went to the cheese factory therein mentioned as the agent of Boden & Co., where he saw two of the plaintiffs, and the maker Doonan (with whom alone he had dealings), to whom he made known that he was buying cheese for Boden & Co., and not for himself,—that as the agent of Boden & Co. he agreed with Bell, Booth and Doonan upon a price for the cheese, and gave them the full address of his principal, Charles Boden & Co., in the city of