

land such evidence having been admitted, the jury, under the direction of the Court, would be asked to find, whether the defendant accepted or received the cheese. I fully agree with the remarks of one of the learned Judges made, in one of the cases referred to, in the books just quoted, that the evidence of the acceptance must be "strong and unequivocal." Let us see if it is so here. Defendant, engaged in buying cheese, goes to one of the plaintiffs, who he knows is interested in the manufacture, and undoubtedly for the purpose of buying the cheese, if he finds it satisfactory, he examines it and offers a price which is accepted on the spot. Under ordinary circumstances this would be amply sufficient to constitute a sale, subject to the after weighing. Defendant then gives his instructions as to what is to be done with the cheese, weighing, etc.; and they are followed to the letter by the person (plaintiffs' employee) to whom defendant gave them. When plaintiffs shipped the cheese as directed, and defendant received the bill of weight, plaintiffs had divested themselves of the possession in favor of the defendant who had thereby actually received the goods purchased by him, not merely by words, but by acts performed in accordance with his own direction. More than that, as an act indicative of ownership on the part of the defendant, two days after the shipment he meets the parties according to agreement, in regard to the payment, and presumably having received the bill of weights; and he there raises no question as to what has been done, thus tacitly, if that were needed, ratifying and approving of the manner in which his orders had been carried out, concerning the cheese, by plaintiffs. I have no hesitation in coming to the conclusion that the defendant not only accepted but received the cheese, of course in the constructive sense laid down by the authors, and in the only manner in which such business is now carried on.

It remains for me to consider the only other important issue between the parties: and if I may say so, it is to my mind the really serious one. Defendant says he bought the cheese from plaintiffs, but that he bought it as the agent of Boden & Co., that at the

time he disclosed to plaintiffs the name of his principal, that plaintiffs knew that he was such agent, that by custom, cheese is bought by agents, and not by principals, that defendant never personally promised to pay, and that plaintiffs sent the cheese to Boden & Co. whom they afterwards treated and accepted as their debtor. As to what occurred on the day of the sale I have only the evidence of one witness, Doonan. He shows a disposition to tell the truth, so far as he remembers, but is singularly unfortunate in not being able to recollect exactly all that was said. However, I only find it necessary to accept his statements in so far as they are borne out by incidents in which defendant took part. It is shown that defendant was the agent of Boden & Co. for the purchase of cheese on the 1st of November, 1889. It is not shown that he told Bell that he was such agent when he bought plaintiffs' cheese. He did give Doonan the name of Boden & Co. as the parties to whom the cheese was to be shipped. It is not shown that a custom exists which is so general as to be recognized, that agents alone buy cheese; although defendant examined five witnesses to prove such custom and plaintiffs seven to disprove its existence.

The law with reference to agency is clearly laid down in Arts. 1715-1716 and 1727, C. C., in so far as applicable to this case. Mr. Justice deLorimier, in his *Bibliothèque*, has, under these articles, pretty well grouped together the most important authorities bearing upon them. Vol. 14, pp. 18, 19, 20, 21, 22, 23, 31, 32, 44, 45, 46 and 47. Vol. 1, Q. B. Dec., p. 201.

Defendant says that he did disclose the name of his principal by giving to plaintiffs the address of Boden & Co. as the party to whom the cheese was to be shipped. This can hardly be accepted as a sufficient disclosure; it was no indication that they were the real purchasers, and defendant had not said they were. The best test is, as the authors say, to ascertain to whom the credit was given and here the question is, did plaintiffs give the credit to defendant or to Boden & Co.; *Becket v. Tobin*, 4 Leg. News, p. 219.

Now three days after the sale we find the