Clarke v. Marriott, 9 Gill, 331.[137] "In the older cases the Court did not advert to the words of the Statute. But the later cases have established, that unless there has been such a dealing on the part of the purchaser, as to deprive him of any right to object to the quantity or quality of the goods, (*sed vide infra* Jones v. Mechanics' Bank), or to deprive the seller of his right of lien, there cannot be any part acceptance," *per* Parke B. in Smith v. Surman, 9 B. & C. 577. Acceptance may be constructive,[138] see Eden v. Dudfield, 1 Q. B. 302, but it must in all cases be unequivocal, and it is a question for the jury *whether, under all the circum- **554** stances, the acts which the buyer does or forbears to do amount to an acceptance, see Morton v. Tibbetts, 15 Q. B. 428.[139] Acceptance may be properly inferred where the goods are ponderous and incapable of being handed over from one to another, and the buyer so far accepts them as to treat them as his own by exercising acts of ownership over them, from which his possession as owner may be inferred, Franklin v. Long *supra;* as in Chaplin v. Rogers, 1 East, 192, where the purchaser of a stack of hay resold part of it.[140] If, however, the article be not pon-

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its arrival at its destination. Seller shipped under a bill of lading in his own name, endorsed, with a draft on the defendant attached, which the latter refused to pay. *Held,* no delivery as there was no intention to vest the right of possession in the vendee until he paid the draft. See also Richardson v. Smith, 101 Md. 21.

[137] Hewes v. Jordan, 39 Md. 472; Corbett v. Wolford, 84 Md. 426; Adler v. Brewing Co., 65 Md. 32; Taylor v. Smith, (1893) 2 Q. B. 65; Page v. Morgan, 15 Q. B. D. 228.

If the vendee does any act to the goods, of wrong if he is not the owner and of right if he is, the doing of that act is evidence of acceptance. Leonard v. Medford, 85 Md. 666. In Jarrell v. Young Co., 105 Md. 280, goods were shipped to a buyer in compliance with a verbal order. Without taking them from the railroad station he shipped them back paying freight both ways and wrote the seller that he was going out of business. It was held that the delivery of the goods to the carrier and the payment of the freight by the buyer did not constitute acceptance and receipt, that he was entitled to have the jury instructed that it was necessary for the plaintiff to prove the defendant *intended* to receive and accept the goods as owner, and that the buyer might himself testify as to his intention.

The acceptance may be by a duly authorized agent. Cooney v. Hax, 92 Md. 134.

[138] Leonard v. Medford, 85 Md. 666; Armstrong v. Turner, 49 Md. 589.

[139] Corbett v. Wolford, 84 Md. 426. But where the evidence clearly shows that there was no acceptance and receipt, the court may instruct the jury that there is no evidence legally sufficient to entitle the plaintiff to recover. Richardson v. Smith, 101 Md. 15.

[140] As also in Leonard v. Medford, 85 Md. 666, where the purchaser of growing trees to be cut and removed by him was put in possession by the seller and cut down part of them.