

When the agent arrived at the jail, it was discovered that the negro had cut his throat, and he soon after died. The Court said that the mere giving of the order for the delivery, and its acceptance by the agent of the plaintiff, who sued to recover back the purchase money, were not an actual delivery and acceptance of the man himself within the meaning of the Statute, as the Sheriff who held him for the defendant might have refused to deliver him, in which case there could not have been an actual acceptance of him by the plaintiff, nor standing alone without any acceptance of or assent to the order by the Sheriff, would it have been a constructive delivery to satisfy the Statute.

The like is the rule as to the receipt of the goods, which cannot take place until all the parties agree that the agent of the vendor shall hold the goods as agent for the vendee. In the same case of *Franklin v. Long* the Court alluded to cases where virtual or constructive delivery was sufficient, as where the goods are ponderous and the buyer accepts them and treats them as his own, or where the delivery is symbolical, as by the delivery of the key of a warehouse in which the goods are lodged, or where actual delivery is impracticable, and can only be made by such symbolical means as the circumstances will allow, as in case of a ship or cargo at sea. "Here," said the Court, "the subject of the sale was an entire thing, in being at the time, and capable of actual delivery; the circumstance of his being some miles off from the place where the contract was made not being material, there was no exercise of right, no dealing with him by the plaintiff as his own, and the mere naked acceptance of the order of delivery could not amount, in the spirit of either of the classes alluded to, to a delivery and acceptance of the negro himself, either actual or constructive, within the meaning of the Statute. The person, to whom the order was directed and in whose custody the man was, might have refused to deliver him pursuant to the order, and the agent of the plaintiff on seeing him might have refused to accept him, as he ultimately did." In this case there was an actual sale, there being both a note of the bargain in writing and the payment of the whole purchase money; and it was held, therefore, to be no objection to the ruling of the Court below, that there was not such a receipt and acceptance of the negro as required by the Statute, and it was eventually determined, that the intention of the parties was that the transaction should be consummated *by a delivery of the negro, that the contract was for **557** the purchase of a living and sound slave, and if he had cut his throat *before* the contract was made, which was a question for the jury, the buyer had a right to rescind the contract, and recover back the purchase money; see also the similar case of *Merrick v. Bradley*, 19 Md. 50, and *Clary v. Frayer*, 8 G. & J. 398. In *Van Brunt v. Pike*, 4 Gill, 270, some pig-iron lying on the bank of the canal in Frederick Co., under the charge of one agent of the owner, was sold by another of his agents in Baltimore, who gave a receipt for the purchase money to the buyer; the latter wrote to the agent in Frederick to ship the iron to his agent, and it was held that these facts constituted a constructive delivery of the iron to the purchaser, and see *Wells v. Biscoe*, Dec. T. 1844, Court of Appeals, there cited. Here, too, the sale was complete by a delivery of a bill of parcels and payment of the purchase money, and it may be observed that the