horse remained a fortnight with *the plaintiff; it was held that this **558**
was a sufficient acceptance. But other cases have occurred, such as Carter v. Toussaint, 5 B. & A. 855, and Tempest v. Fitzgerald, 3 B. & A. 680, where the sale being for cash, and the buyer gaining no right of property till the price was paid, or where nothing being said about the price the seller could not be compelled to deliver until he had received the price, it was determined that, as he had not parted with his possession or control over the horses, there was no actual acceptance or receipt by the purchaser. In Atwell v. Miller, 6 Md. 10, the defendant purchased in January sundry bales of linens of the plaintiffs, which were at once set aside and marked with his name. Afterwards the defendant wrote a letter to the plaintiffs, asking for a bill of the linens. Subsequently, in the ensuing fall, the plaintiffs' clerk called on the defendant and had a conversation with him about the bill of the linens which were still in the plaintiffs' warehouse, and the defendant then requested the plaintiffs to sell the goods for him on his account and risk, and try and save him from loss. The verdict was for the plaintiffs, and the Court said that if it stood upon the evidence in regard to a delivery they would not be disposed to disturb it; and see Castles v. Sworder *supra*. Constructive delivery is a mixed question of law and fact, but the circumstances necessary to constitute such a delivery must be found by the jury as in case of an actual delivery, *ibid.;* and there, as in Hall v. Richardson, some reliance seems to have been placed on the circumstances of designating the goods for the use of the purchaser by marking and removing them; and Hodgson v. Lebret, 1 Camp. 233, and Anderson v. Scott, *ibid. n.* are relied on in the latter case. But the former of these cases has been overruled by Baldey v. Parker *supra*, and the latter disapproved in Proctor v. Jones, 2 C. & P. 532, and Saunders v. Topp *supra*.

In Thompson v. B. & O. R. R. Co. 28 Md. 396, a sale was made of a quantity of iron lying at a furnace and on the road, the different parcels of which were pointed out by the agent of the vendor to the agent of the vendee, and the whole charged to the vendee by his agent, under the direction of the vendor, with the intention of making a delivery, and it was held sufficient, regard being had to that intention and the subject-matter of the contract. The Court went on to observe that where the goods are ponderous, &c., marking, measuring, weighing, &c., are held to amount to a constructive delivery, but the only reason why such acts are required is to identify the goods sold, for if they are capable of being identified without these acts, and by the contract of sale are identified, the title passes. But this belongs to a distinct head of the contract of sale.

It was further remarked in the same case, in the language of Shaw C. J. in Arnold v. Delano, 4 Cush. 38, that there is a marked distinction between those acts, which as between vendor and vendee upon a contract of sale go to make a constructive delivery and vest the property in the vendee, and that actual delivery by the vendor which puts an end to his right to hold the goods as a security for the price; and as to a sale on credit, the law, in holding that a vendor who has given credit for goods waives his lien for the price, does so on one implied condition, *viz:* that the vendee shall keep his credit good. If, therefore, before payment the vendee became bankrupt or insolvent, and the vendor still retains the custody of the