

goods or any part of them, or if the goods are in the hands of a middleman or carrier on their way to the vendee and have not got to his actual possession, and the vendor before they do so can regain his original possession by a stoppage *in transitu*, then his lien is restored and he may hold the goods for the price. So long, added the Court, as the vendor does not surrender actual possession his lien remains, though he may have done acts which amount to a constructive delivery so as to pass the title or **559** avoid the Statute; see *Hall v. Richardson* *supra*. And in *O'Brien v. Norris*, 16 Md. 122, filing a claim in attachment was held equivalent to a stoppage *in transitu*. As to sales for cash on delivery, where there is evidence of an usage to deliver without demanding the price, and its effect in transferring the title, see *Powell v. Bradlee*, 9 G. & J. 220; and see also *Foley v. Mason*, 6 Md. 37.

In *Smith v. Bryan*, 5 Md. 141, it was held, that where A. in writing sold trees on his land to B., who having cut and removed some of them, re-sold the residue to A. by parol, the transactions were both sales of goods within the Statute; but A. being the owner of the land on which the trees were growing, the re-sale *eo instanti*, by force of law, gave him possession, and the delivery was complete, see *Byre v. Etnyre*, 2 Gill, 150. And it was settled in England in *Eden v. Dudfield* *supra*, that though it be difficult to prove an actual receipt where the goods are already in the hands of the purchaser, yet if he do acts inconsistent with the notion of his former possession remaining unchanged, it is sufficient.

Earnest and part payment.—As to earnest. In *Blenkinsop v. Clayton*, 7 Taunt. 597, the buyer drew a shilling across the vendor's hand, which the witness called striking off the bargain, but returned the coin to his own pocket, and this was held not sufficient. But after earnest given, the vendor cannot sell the goods to another without a default in the vendee; therefore, if the vendee does not come and pay and take the goods the vendor ought to go and request him, and then if he does not come and pay and take the goods away in a convenient time, the agreement is dissolved, and he is at liberty to sell them to any other person, *Langfort v. Tyler*, 1 Salk. 113. In *Goodall v. Shelton*, 2 H. Black. 316, an action for goods sold and delivered, earnest had been paid and the goods wrapped in cloths furnished by the defendant, the buyer, but the seller, the plaintiff, peremptorily insisted on not parting with the goods till he was paid, and it was clearly held, therefore, that there was no delivery. The action should have been for goods bargained and sold.

Antecedent indebtedness.—A sale in consideration of an antecedent indebtedness is good, *Thompson v. B. & O. R. R. Co.* *supra*. In *Mudd v. Turton*, 4 Gill, 233, the owner of a couple of slaves, who were then little children of small value, told the plaintiff, a physician, who had been attending them for some time, that if he would cure them he might have them for their medical bill, but he must make no charge against them from that time. The plaintiff assented, continued to attend them and they recovered, but were never delivered to him. And it was held that this claim for medical services, so surrendered at the time of the agreement, was as available to pass title as if money had passed. And the delivery of a bill of exchange or promissory note is part payment, for it amounts to payment till dishonored, *Hall v. Richardson*; *Merrick v. Brad-*