

party to get him to take them back. The first offer to return the negroes, was before the death of the infant, who died in July of the same year.

There is, to be sure, some contradictory proof on this point, but the evidence of a witness affirming that he heard a statement made in a conversation between parties, cannot well be overthrown by proof that another witness was present, who did not hear the same thing. The witness who proved the fact in this case, stands altogether free from suspicion, and is unimpeached as to veracity; and without intending to cast any discredit upon the witness who says he did not hear the remarks, and who I am well assured, did not hear them, I am satisfied that they were made, and that such prior offer was made. The answer of the defendant, John Mitchell, also denies the prior offer to return the negroes, but I am persuaded Mr. Mitchell must have forgotten the fact at the time his answer was prepared.

The presumptions in favor of the statement of the witness Gantt upon this point are so strong, that I considered it my duty to give credence to it; and hence, I assume, that about one month from the date of the purchase, the complainant did offer to return the negroes, and cancel the contract of sale; and the question then is, whether this offer is sufficient to enable the court to vacate the sale, and restore the parties to their original condition.

It cannot, I think, be maintained, that the offer to return the negroes within the month, was not within a reasonable time; neither, I presume, can it well be contended, that the purchaser is under an obligation to institute his action immediately after the vendor refuses to take the property back and refund the money. An offer to return the chattels in a reasonable time on breach of warranty, is equivalent in its effect upon the remedy to an offer accepted by the seller, and, therefore, assuming in this case, that the offer was made in June, 1848, I am to treat the case as if the offer had been accepted, and the negroes actually taken back by the vendor. If such had been done, there can be no doubt that the complainant would not have lost his remedy, by forbearing to resort to legal proceedings, until Oc-