

promise. Such part performance as would warrant a decree for specific performance in equity is sufficient defense in law for ejection. In *Johnson et al. v. Hurley*, 115 Mo. 513, 22 S. W. 492, the defendant who was led by a land owner to believe an agent had authority to sell particular land was sued in ejection, but specific performance of the contract was decreed. Similarly, held in *Hubbard v. Hubbard*, 140 Mo. 300, 41 S. W. 749. In no instances, however, is mere part payment of the purchase price sufficient to entitle a party to specific performance of contract to convey land. *Parke & Barron v. Leewright*, 20 Mo. 85. If an oral agreement is followed by possession, the taking of possession is sufficient performance to take the case out of the Statute. *Young v. Montgomery*, 28 Mo. 604. Even an equitable interest may be sold verbally if possession is taken by the vendee, *Rosenberger v. Jones et al.*, 118 Mo. 559, 24 S. W. 203. Entry into possession with consent of the vendor is sufficient part performance in favor of vendor. *Tatum v. Brooker*, 51 Mo. 148; *Luckett v. Williamson*, 37 Mo. 388, *contra*. The vendee in possession may enforce specific performance of contract against vendor. *Adair v. Adair*, 78 Mo. 63; *Emmel et al. v. Hayes et al.*, 102 Mo. 186, 14 S. W. 209. The possession must, however, be under contract and not a mere tenancy. *Price v. Hart*, 29 Mo. 171. In *White v. Watkins*, 23 Mo. 423, the court held abandoned possession insufficient to take case out of the Statute of Frauds. Nor is mere continuance in possession considered sufficient to take case out of the Statute of Frauds. Nor is mere continuance in possession considered sufficient part performance. *Emmel et al. v. Hayes et al.*, *supra*, overruling *Simmons v. Headler*, 94 Mo. 482, 7 S. W. 20. In Missouri an oral promise to convey an interest in land by way of compensation is not within the Statute of Frauds, *Teats v. Flanders*, 118 Mo. 660, 24 S. W. 126; *Gupton v. Gupton*, 47 Mo. 37. In the latter case the court held great patience with the grantees' infirmities required in addition to good temper, forbearance, honest effort to please, good food, medicine, and clothing.

E. C. F. '27.

WEAPONS—CONCEALMENT IN AUTOMOBILE.—Defendant prosecuted for carrying pistol in pocket of left front door of automobile. Held, carrying pistol in pocket of automobile door, flap of pocket being down, is not carrying weapon "concealed or on person." *State v. Brunson*, 162 La. 162, 111 So. 321.

This case is clearly against weight of authority. In *Lewallen v. State*, 148 Tenn. 326, 255 S. W. 373, the defendant when caught operating a still, reached over a nearby log, secured a pistol and presented it in a threatening manner, court held this sufficient carrying of a pistol for purpose of being armed. The carrying of a pistol in a grip, satchel, or handbag was held to be a violation of statute against carrying concealed weapons in *State v. Blazovitch*, 88 W. Va. 612, 107 S. E. 291. Similarly carrying of pistol in basket in one's hand is carrying on and about the person. *Johnson v. State* 51 Tex. Cr. App. 648, 104 S. W. 902. In Missouri courts have held that the concealment need not be on the person, as the offense is made out if the concealed weapon is in such proximity to accused as to be within reach and convenient control. *State v. Conley*, 280 Mo. 21, 217 S. W. 29. Same rule was applied in *State v. Mulconry*, 270 S. W. 375 (Mo.) where the pistol was behind the driver's body, on seat of the automobile. In this case, however, the court further instructed the jury, that there would be no concealment if the weapon were in plain view. In *State v. Renard*, (Mo.) 273 S. W. 1058, an officer making an arrest by feeling with hand, found a loaded revolver on floor of automobile, at defendant's feet; the night being so dark that the pistol could not be seen, the offense was held a concealment of the weapon. In *State v. Scanlan*, 308 Mo. 683, three revolvers were found on floor of automobile, and three pistols were found on rear seat after six men were ordered out of the car by officers. The men were seen, seemingly taking some-

thing out of their pockets before leaving the car. Court held such evidence sustained conviction for carrying concealed weapons about the person. In *Robinson v. Commonwealth*, 207 Ky. 53, 268 S. W. 840, court held conviction proper where defendant had pistol in overall pocket, even though officer could well discern form of pistol. In *Hall v. State*, (Tex.) 277 S. W. 129, in prosecution for unlawfully carrying pistol, court held that accused having pistol in car was sufficient to make same violation of law. A pistol carried in the box of a buggy seat is carried "about the person" of the driver. *Emerson v. State*, 80 Tex. Cr. App. 354, 190 S. W. 485. Same holding in *Wagner v. State*, 80 Tex. Cr. App. 66, 188 S. W. 1001. In an earlier Texas case, *Hardy v. State*, 37 Tex. Cr. Repts. 511, 40 S. W. 299, defendant was held not guilty of carrying on and about the person a pistol, where the weapon was in a box in a wagon in which he was riding. Same holding under similar facts in *Thompson v. State*, 48 Tex. Cr. App. 146, 86 S. W. 1033. Contra to *Thompson v. State*, *supra*, is *Armstrong v. State*, (Texas) 265 S. W. 701, where a pistol in satchel on running board of automobile was held carrying on or about the person. Same holding in *Welch v. State* (Texas) 262 S. W. 485, where pistol was in satchel on floor of automobile. In *Hayer v. State*, 28 Ga. App. 67, 110 S. E. 320, pistol under seat of buggy, not in contact with defendant's hands or any other part of body, was held not a concealed weapon on or about person. Thus, by the weight of authority, weapons that cannot readily be seen, but which are within convenient control of defendant are concealed weapons on or about the person.

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