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Statute of Frauds--Persons to whom it is Available as a Defense

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could promptly use the weapon if prompted to do so." State v. McManus, 89 N. C. 555. The Missouri court expresses the same view by saying, "The Court owes a duty to the public to see that the object of the statute is not frittered away by a narrow construction." State v. Conley, 255 Mo. 185, 217 S. W. 29. Where the possession of the weapon is only momentary, and for an innocent purpose, the statute has not been violated; but otherwise where the purpose is unlawful. Sanderson v. State, 23 Tex. App. 220, 5 S. W. 138; Schup v. State, 58 Tex. Cr. R. 165, 124 S. W. 928. The West Virginia court in holding that the statute in question is broad enough to include carriage in a satchel, grip or handbag, indicates, inferentially at least, that it will carry this doctrine of liberal construction further than the facts disclosed in the principal case, for it says, "Inhibition of such a carriage of deadly weapons as makes resort to them easy and ready is clearly within its purpose and spirit." Quaere, Is a deadly weapon carried in the pocket of an automobile about one's person?

—M. H. M.

Statute of Frauds—Persons to Whom it is Available as a Defense.—A and B, real estate partners, bought land, title to which, for convenience, they took in the name of B. A, without B’s knowledge, contracted verbally to sell a portion of the land to P. By the residuary clause of his will, B devised his title to his wife C, and died. P seeks specific performance against A and C. C demurred, setting up the Statute of Frauds. Held, C, not being a party to the contract, can not set up the Statute of Frauds as a defense. Tanner v. McCreary, 107 S. E. 405 (W. Va. 1921).

It is true that one not a party to a verbal contract for the sale of land, or not in privity with the parties thereto, cannot interpose the Statute of Frauds as a defense in a suit for specific performance of the contract. General Bonding etc. Co. v. McCurdy, 183 S. W. 796 (Tex. Civ. 1916). See 1 Browne, Statute of Frauds, 152; 20 Cyc. 306. But was not C a privy to this contract? Since the property was paid for by both A and B, although the legal title was conveyed to B, yet there was a resulting trust of the land for the benefit of both A and B. Currence v. Ward, 43 W. Va. 368, 27 S. E. 329; Mankin v. Jones, 68 W. Va. 422, 69 S. E. 981. A and B, then, held the equitable title as tenants in common. That A had authority to contract for the partnership to sell the land in
question is not disputed. And as he had authority to contract for the partnership, B, along with A, must be considered a party to the contract. See Rowley, Partnership, 542. Now, when B devised his title to C, it seems that C would be placed in the same position with reference to the contract as that occupied by B. This would seem to make C a privy to the contract. Craig v. Johnson, 3 Marsh. J. J. (Ky.) 572. See 32 Cyc. 388. And as such she would be entitled to set up the Statute of Frauds. See Sonneman v. Merz, 221 Ill. 362, 77 N. E. 550, 551. The Statute is available to the subsequent guarantees of a party to the contract. Gibson v. Stalmaker, 106 S. E. 243 (W. Va. 1921); Ugland v. Farmers’ etc. Bank, 23 N. D. 536, 137 N. W. 572. See 16 Ann. Cas. 412; 25 R. C. L. 734. Likewise, to the heirs and personal representatives. Bailey v. Henry, 125 Tenn. 390, 143 S. W. 1124; Donovan v. Walsh, 130 N. E. 841 (Mass. 1921); Clarke v. Philomath College, 195 Pac. 822 (Ore. 1921); Zellman v. Wassman, 193 Pac. 84 (Cal. 1920). An escrow has also been allowed to set it up. Sebben v. Trezevant, 3 Dessaus. (S. C.) 213. And there is at least dictum to the effect that it is available to a residuary legatee. See Sebben v. Trezevant, 3 Dessaus, (S. C.) 213, 220. It seems, therefore, that the court erred in applying the law to the facts of the principal case, and that it should have allowed C to set up the Statute of Frauds.

—W. F. K.

Evidence — Res Gestae — Spontaneous Exclamations. — The defendant, a boy of 14 years, was alone in his father’s place of business when one De Pue entered and presented him with a diamond ring. On his father’s return the boy left. De Pue died and the administrator of his estate brought an action of detinue to recover the ring. Defendant’s mother testified that defendant, on the evening in question, ran into the house and showed her the ring and told her De Pue had given it to him. The evidence was admitted in the lower court. Held, the donee’s statements as to the gift are not admissible as res gestae. De Pue v. Steber, 108 S. E. 590 (W. Va. 1921).

A few cases will illustrate the difficulty in trying to ascertain the exact meaning of the doctrine of res gestae. A statement of an engineer made an hour after the accident and several hundred yards away is not a part of the res gestae. Hawker v. Baltimore & Ohio R. Co., 15 W. Va. 628. Declarations made on the day after a