contract not being in writing; 3. the contract to which they refer must be such as in its own nature is enforceable by the Court; and 4. there must be proper parol evidence of the contract which is let in by the acts of part-performance."

Lester v. *Foxcroft* (1700), Colles 108, 1.E.R. 205, is a case where the plaintiff took possession of certain lands under an oral agreement for a building lease, tore down buildings on the land, erected others and leased them in his own name. Before a lease was executed, the reversioner died, and his executors denied the contract and any knowledge of it, and pleaded the Statute of Frauds. Upon appeal, their Lordships directed the execution of a lease in the terms agreed upon, and that the tenant and his assigns should in the meantime hold and enjoy the same under the covenants and agreements in the said intended lease contained. In *Morphett* v. *Jones* (1818), 1 Swan. 172, 36 E.R. 344, there was an oral agreement for a lease for 21 years. After the agreement had been made the owner wrote a letter to the tenant "I hereby authorise you to enter the undermentioned lands as tenant, on Wednesday the 11th instant, being Old Michaelmas Day." The tenant entered into possession and paid rent, on the faith of having a lease, expending large sums in repairs and improvements. The landlord subsequently desiring to sell the lands demanded possession, denied a lease, and claimed the benefit of the Statute of Frauds. Specific performance was decreed. Sir Thomas Plumer, M.R., at p. 181, stated the law to be:—

"In order to amount to part-performance, an act must be unequivocally referable to the agreement; and the ground on which Courts of equity have allowed such acts to exclude the application of the statute, is fraud. A party who has permitted another to perform acts on the faith of an agreement, shall not insist that the agreement is bad, and that he is entitled to treat those acts as if it never existed. That is the principle, but the acts must be referable to the contract. Between landlord and tenant, when the tenant is in possession at the date of the agreement, and only continues in possession, it is properly observed that in many cases that continuance amounts to nothing; but admission into possession having unequivocal reference to contract, has always been considered an act of part performance. The acknowledged possession of a stranger in the land of another is not explicable except on the supposition of an agreement, and has therefore constantly been received as evidence of an antecedent contract, and as sufficient to authorise an inquiry into the terms."

And see *Pain* v. *Coombs* (1857), 1 DeG. & J. 34, 44 E.R. 634, *Miller* v. *Finlay* (1862), 5 L.T. (N.S.) 510. Even though the tenant takes possession without the consent of the owner, yet if the owner afterwards acquiesce, the possession may amount to sufficient part-performance to take the case out of the statute. *Gregory* v. *Mighell* (1811), 18 Ves. 328, 34 E.R. 341. The following is an extract from the judgment, 18 Ves., at p. 333, and 34 E.R., at p. 343:—

"It is said, however, that the possession was taken without the defendant's consent; and consequently is not to be considered as a possession under the agreement. The plaintiff had no other title to possess the land; and therefore his possession is *primâ facie* to be referred to the agreement As to the defendant's allegation that it was without consent, besides that it seems to be disproved by Gregory and Philcox, I do not conceive that the defendant is now at liberty to say, it was a possession, that had no reference to the