J. E. Farewell, K.C., and W. H. Harris, Port Perry, for plaintiff.

N. F. Paterson, K.C., and S. S. Sharpe, Uxbridge, for defendant.

MacMahon, J.:—The plaintiff had a perfect right to recede from any verbal offer she made to the defendant, her brother, to accept $50 for her share of the land. . . . There was no reference to arbitration. The plaintiff was not aware until after the so-called arbitration that the arbitrators had met to consider the matter. She was not represented by her brother John, and, although John received notice of the arbitrators meeting, he did not appear on her behalf, and she did not receive any notice. . . . As an award or as a valuation what was done would not bind her. There is no writing to satisfy the Statute of Frauds, and the plaintiff has not acquiesced in the possession by the defendant of the land and in his making certain improvements, some of which were absolutely necessary, and they are not such acts of part performance as take the case out of the statute. See remarks of Sir James Wigram in Dale v. Hamilton, 5 Hare 381, quoted in Maddison v. Alderson, 8 App. Cas. at p. 479.

Usual judgment for sale. Reference to Master at Whitby, &c.

FALCONBRIDGE, C.J.   JULY 10TH, 1902.

TRIAL.

MANN v. CITY OF ST. THOMAS.

Municipal Corporation—Sidewalk—Repair—Gross Negligence.

Action by James Mann to recover $1,000 damages for injuries (dislocation of shoulder) received on the 11th January, 1902, by a fall upon an icy sidewalk at the corner of Talbot street and Woodworth avenue, in the city of St. Thomas. The plaintiff charged that the defendants were guilty of gross negligence in allowing the sidewalk to be out of repair.

J. A. Robinson, St. Thomas, for plaintiff.

W. B. Doherty, St. Thomas, for defendants.

FALCONBRIDGE, C.J., held that, having regard to the place where the accident happened, the state of the weather, and the other surrounding circumstances, there is not that " gross negligence " which must exist to fasten liability on defendants. See Ince v. City of Toronto, 27 A. R. 410, 31