McGregor Young, K.C., for the appellants.
W. T. J. Lee, for the defendant, respondent.

MEREDITH, C.J.O., reading the judgment of the Court, stated the facts, and said that the basis of the learned County Court Judge's conclusion against the appellants was, that acts of part performance, to take a case out of the Statute of Frauds, must be such as to render it a fraud in the vendor to take advantage of the contract not being in writing. This, the Chief Justice thought, was based upon a misapprehension as to what was meant by "fraud" in the cases dealing with the effect of part performance. He referred to Fry on Specific Performance, 5th ed., pp. 294, 295, paras. 585, 586; Mundy v. Jolliffe (1839), 5 My. & Cr. 167, 177; Wilson v. West Hartlepool Harbour and R.W. Co. (1865), 5 DeG. J. & S. 475, 492, 493; Parker v. Taswell (1858), 2 DeG. & J. 559, 571.

Taking possession by a purchaser is an act of part performance. In order to exclude the operation of the Statute of Frauds, such a possession as the subject-matter of the contract admits of is sufficient; e.g., in the case of vacant land, entry upon it for the purpose of taking possession, with the consent of the vendor, is sufficient, although the purchaser does not remain upon the land, but goes upon it only when he has occasion to do so.

The term of the oral agreement that a "survey or description" of the land should be made and a lease prepared did not render the agreement incomplete.

The objection that, because there was no assent under the appellants' corporate seal to the terms that had been agreed upon between the respondent and the members of the council who made the arrangement with them, there was no agreement, could not prevail. The appellants having been let into possession, the respondent could not set up the absence of their corporate seal: Wilson v. West Hartlepool Harbour and R.W. Co., supra; Fry, p. 323, para. 648; and the rule was applicable to the case of a municipal corporation, notwithstanding the provisions of sec. 249 of the Municipal Act, R.S.O. 1914 ch. 192.

Waterous Engine Works Co. v. Town of Palmerston (1892), 21 S.C.R. 556, distinguished.

The appeal should be allowed with costs, and judgment should be entered for the plaintiffs for specific performance with costs.