then purchased a portion of them from McK., who did not pay the owner therefor and he brought an action of trover against E.

Held, affirming the judgment under appeal (36 N.B.R. 169), NESBITT and KILLAM, JJ., dissenting, that the owner having induced E. to believe that he could safely purchase from McK. could not afterwards deny the authority of the latter to sell.

Held, per NESBITT and KILLAM, JJ., that as there was no evidence that the owner knew the identity of the person making the inquiry by telephone, and nothing was said by the latter to indicate that he would not make further inquiry as to McK.'s authority to sell, there was no estoppel.

Held, per TASCHEREAU, C.J., that as the owner had given McK. an apparent authority to sell, and knew that he had agreed to buy for that purpose, a sale by him to a bona fide purchaser was valid. Appeal dismissed with costs.

Connell, K.C., and *Carvell*, for appellants. *Pugsley*, K.C., and *Gregory*, K.C., for respondent.

Que.] CITY OF MONTREAL *v.* MONTREAL STREET RAILWAY CO. [March 25.

Operation of tramway—Municipal franchise—Construction of contract—Suburban lines—Percentages upon earnings outside city limits.

The city of Montreal called for tenders for establishing and operating an electric passenger railway within its limits in accordance with specifications, and subsequently entered into a contract with a company then operating a system of horse tramways in the city which extend into adjoining municipalities. The contract, dated 8th March, 1893, granted the franchise to the company for the period of thirty years from August 1, 1892. A clause in the contract provided that the company should pay to the city annually during the term of the franchise, "from Sept. 1, 1892, upon the total amount of its gross earnings arising from the whole operation of its said railway, either with cars propelled by electricity or with cars drawn by horses," certain percentages specified according to the gross amounts of such earnings from year to year. Upon the first annual settlement, on Sept. 1, 1893, the company paid the percentages without any distinction being made between their earnings arising beyond the city limits and those arising within the city, but subsequently they refused to pay the percentages except upon the estimated amount of the gross earnings arising within the limits of the city. In an action by the city to recover percentages upon the gross earnings of the lines of tramway both inside and outside of the city limits;

Held, reversing the judgment appealed from, the CHIEF JUSTICE and KILLAM, J., dissenting, that the city was entitled to the specified percentages upon the gross earnings of the company arising from the operation of