

## COURT OF APPEAL.

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Municipal Corporation. — Powers of expropriation. —  
Right of way. — Servitude.

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MONTREAL, 27th May, 1911.

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TRENHOLME, LAVERGNE, CROSS, ARCHAMBEAULT, CARROLL, JJ.

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MARCHESSAULT *vs* THE TOWN OF ST. OURS.

HELD.—That the powers given by a charter of a municipality to acquire, by way of proceedings in expropriation, the ownership of real property for any object of public utility of a municipal nature does not give the council the right to acquire a right of way.

29-30 *Vict. (Q.) ch. 60*, (1866), ss. 53, 54.

The town of St. Ours presented a petition, praying for an order appointing commissioners in expropriation to fix the indemnity for the expropriation of a right of way over the property of the appellant.

The party to be expropriated contested the petition on the ground that the petitioner had no legal right under its charter, to expropriate a right of way.

The Superior Court was of opinion that a right of passage is a real right attaching to an immoveable and forming