

In sec 41, which provides for appeals in matters of assessment, is another instance of an appeal being allowed where the proceedings did not originate in a Superior Court.

38. Except as hereinafter otherwise provided, an appeal shall lie to the Supreme Court from the judgment, whether final or not, of the highest court of final resort now or hereafter established in any Province of Canada, whether such court is a court of appeal or of original jurisdiction, where the court of original jurisdiction is a superior court, in the following cases:

(a) Upon any motion to enter a verdict or non-suit upon a point reserved at the trial;

(b) Upon any motion for a new trial;

(c) In any action, suit, cause, matter or other judicial proceeding originally instituted in any superior court of equity in any Province of Canada other than the Province of Quebec, and from any judgment in any action, suit, cause, matter or judicial proceeding, in the nature of a suit or proceeding in equity originally instituted in any superior court in any Province of Canada other than the Province of Quebec. R. S., c. 155, s. 24;—54-55 V., c. 25, s. 2.

"Except as hereinafter otherwise provided." There are no provisions in the Act to the contrary.

* The words "whether final or not" were not in the Act formerly in respect to any of these provisions. They are not applicable to sub-sec. (a), as the judgment on the matters mentioned therein is always final. And the other two sections in terms apply to both final and interlocutory judgments so as to them the descriptive words are unnecessary. As to sub-sec. (c) see *Grant v. McLaren*, 23 S. C. R. 310.

VERDICT OR NONSUIT.

(a) Upon any motion to enter a verdict or nonsuit upon a point reserved at the trial:

Notice of such appeal must be given within twenty days from the date on which the decision appealed from was given; see, 70.

Apparently no appeal has ever been brought under this provision.

Cases have come before the Court where the court appealed from has refused to set aside the verdict at the trial and enter a nonsuit or verdict for the opposite party, but in such cases the appeal has lain under the provisions of sec. 36. In *Trustees of St. John Y. M. C. A. v. Hutchinson*, S. C. Dig.