

(e) In any case in which a by-law of a municipal corporation has been quashed by a rule or order of court, or the rule or order to quash has been refused after argument. R. S., c. 135, s. 24;—54-55 V., c. 25, s. 2.

Sub-sec. (a) was 24 (d), sub-sec. (b) 24 (f), and the remainder 24 (g) of the former Act.

“Except as herein otherwise provided;” there are no provisions to the contrary.

SPECIAL CASE.

An appeal lies,

(a) From the judgment upon a special case, unless the parties agree to the contrary, and the Supreme Court shall draw any inference of fact from the facts stated in the special case which the court appealed from should have drawn.

The special case must raise a question of law for decision. If submitted to the court below on matters of fact only, the judgment thereon is *extra cursum curiae* and not susceptible of appeal. *Burgess v. Morton* [1896] A. C. 136.

Thus in *Halifax and Cape Breton Coal and Ry. Co. v. Gregory*, S. C. Dig. 310, on appeal from a judgment of the Supreme Court of Nova Scotia, a new party was brought in, and it was agreed that the appeal should be decided on the merits irrespective of the pleadings or any technical defence raised thereon. The Supreme Court having affirmed the judgment appealed from, the Judicial Committee of the Privy Council refused leave to appeal therefrom, holding that the Supreme Court did not exercise its jurisdiction as a Court of Appeal, but acted under the special reference; see 11 App. Cas. 229. And in *Canadian Pacific Ry. Co. v. Fleming*, 22 S. C. R. 33, counsel for both parties consented at the trial that the case should be withdrawn from the jury and referred to the full Court, with power to draw inferences of fact, and on the law and facts either to assess damages to the plaintiff or enter a judgment of nonsuit. The full Court having assessed the damages an appeal by the company to the Supreme Court was quashed on the ground that the court appealed from acted under the agreement as a quasi-arbitrator, and its decision, not having been given in the regular course of judicial procedure, was not open to review on appeal.