

Q. B.]

NOTES OF CASES.

[C. P.]

matters of award. The origin of the section, 40 V. c. 7, schedule A. (84), placed the question perfectly beyond doubt, and *Re Freeman, Cragie v. Proudfoot*, 2 E. & A. Rep. 109, was entirely in point as showing that no right of appeal existed.

Moss, C. J., refused the application, holding that the matter was not appealable, and that section 200 of the Revised Statutes, c. 50, in no way whatever affected the question.

QUEEN'S BENCH.

VACATION COURT.

KNOTT V. THE HAMILTON & FLAMBORO'
ROAD COMPANY.

Galt, J.] [Sept. 28.

Road Co.'s Act (R. S. O. ch. 152)—Roads completed and tolls established—Extensions—Right to collect tolls.

The provisions of the "General Road Co.'s Act" (R. S. O. ch. 152), respecting the extension of roads, apply to roads which have been constructed and completed, and tolls established thereon.

In this case the extensions were new constructions within the City of Hamilton, and measured separately were less than two miles, though the distance of the original road and the extension together much exceeded two miles. *Held*, that the defendants were entitled to exact toll therefor.

No toll-gate had been maintained for nearly nine years on the portions of the road within the City of Hamilton. *Held*, that defendants could, nevertheless, under sec. 89 of the Revised Statute, erect and maintain a toll-gate thereon, and exact toll from the travelling public.

McKelcan, Q.C., for plaintiff.

Robinson, Q.C., contra.

COMMON PLEAS.

VACATION COURT.

[October 8, 1880.

NAGLE V. TIMMINS.

Insolvency—Maliciously suing out demand for assignment—Damages—Pleading.

Held, by GALT, J., that an action will lie by a debtor to recover damages against

a creditor who has falsely and maliciously made a demand for an assignment under the 4th sec. of the Insolvent Act of 1875, and amending Acts, and that the penalty for so doing is not confined to the question of costs under sec. 5 of the Act.

To such an action, the defendants pleaded a plea which, after setting out a variety of dealings between the parties, showing that from time to time the plaintiff failed to meet his engagements with the defendant, concluded that the plaintiff being indebted to the defendant in the sum of \$1,400, and being unable to pay the same or to meet his engagements, &c., the defendant *bona fide* believing the plaintiff to be insolvent within the meaning of the Insolvent Act of 1875, and amending Acts, and having reasonable and probable cause for so believing, and without malice, made a demand on the plaintiff, &c.

Held, plea good.

Bethune, Q.C., for the plaintiff.

Robinson, Q.C., for the defendant.

MC CARTHY V. ARBUCKLE.

Arbitration—Master's certificate—Time to move against—Appeal.

In this case, on the parties being brought before the Court, in accordance with the judgment of the court, as reported in 31 C. P. 48, and being made parties to the action, it was objected that the application to refer back the Master's report was too late, not having been made until after the lapse of two terms from the making thereof.

Held, by GALT, J., that this was not a reference within 9 & 10 Wm. III. ch. 15, but that it came within the 210th section of R. S. O. ch. 50, as being a report or a certificate made under a compulsory reference, and under the 209th sec. of the Act, should have been moved against within the first six days of the term following the making thereof.

Held also, that even if looked upon as an appeal from the Master's report, the evidence did not justify the interference of the court.

Snelling, for the plaintiff.

Hall, for the defendant.