The Legal News.

Vol. III. APRIL 17, 1880. No. 16.

PROCEEDINGS UNDER THE INSOLVENT ACT.

The case of *The Queen* v. *Jobin*, to be found in the present issue, shows that the Act repealing the Insolvent Act has been worded so as to permit the escape of a person indicted under its provisions before the repealing Act was passed. This is unfortunate, as it is, of course, to be regretted that those charged with criminal offences should escape trial on objections of a purely technical nature. The Act contains this phrase: "In any case where the estate of an insolvent has been vested in an official assignee before the passing of this Act." The indictment of Jobin having been drawn before the repealing Act was passed, no foresight could have obviated the difficulty which was held by the Court to be fatal, namely, that the indictment did not allege that the estate of the accused had been vested in an official assignee before the passing of the repealing Act. The prosecution could have proved this as a fact, and when the indictment was framed there was no necessity for alleging it. The point is one of considerable nicety, and the accused, in getting the benefit of the ruling, profits by a subtilty not often available under the modern system of criminal procedure. It may be remarked that no motion was made to amend the indictment—a mode of getting over the difficulty which would probably have been sanctioned by the Court, in view of the clause of the Interpretation Act referred to in the note to the report.

NOTES OF CASES.

COURT OF QUEEN'S BENCH.

[CROWN SIDE.]

MONTREAL, April 7, 1880.

RAMSAY, J.

THE QUEEN v. JOSEPH KERR et al.

Nuisance—Obstructing the Channel of a Navigable River.

Joseph Kerr, John McLane and Joseph E. Brownell were indicted for that they, on the 22nd day of June, in the year of Our Lord 1879, at the parish of Vaudreuil, in the district of Montreal, unlawfully and wilfully did obstruct the free passage of a certain river, to wit: the Ottawa River, to wit: a certain part of the said Ottawa River there situate, to wit, at the parish of Vaudreuil, the said river being a public and navigable river, by then and there leaving a certain raft composed of railway ties thereon for a long and unreasonable time, to wit, six weeks, and refusing to remove the said raft when thereunto required, and thereby preventing one François Xavier Archambault and others from passing thereon and therein, committing thereby a public nuisance and great injury and prejudice to the said François Xavier Archambault and others as aforesaid, and to the public.

The evidence established that the raft arrived, towed by a steamer, on the 22nd June, and remained till about the 2nd or 3rd of August, by which time it was all removed. It was also proved that the raft was 250 feet long by 150 feet wide, that it almost filled the whole channel of the river between the west shore of the Ottawa River and a small island or shoal, the channel being from high water mark to high water mark only 260 feet in width, and that it absolutely barred the whole available channel, at all events at first. The defence, amongst other things, proved considerable diligence in removing the raft by cribs, beginning the work the day after the arrival of the raft, but that notwithstanding this diligence the whole raft was not removed until the time above mentioned, because of the small space of ground belonging to the Grand Trunk Railway, by which the wood could be landed. The evidence also established that McLean and Brownell came down in charge of the raft, and that the raft was under the control of Kerr, on whose orders the other two defendants acted.

RAMSAY, J., in charging the jury, said: The case is not one which demanded the warm appeals that have been made to the sympathies of the jury, nor is it necessary to examine whether the complainants might have taken any other method to vindicate their rights or not. By the criminal law of England a public nuisance is an indictable misdemeanor, and the offence laid to the defendants' charge is a nuisance, at