There appear to be two courses open to the creditors under this clause. They may either object to insolvent's discharge on the ground of fraud under the Act when he applies for it, or they may sue the insolvent for the amount of their debt, alleging fraud, and have the fraudulent debtor imprisoned for any period not exceeding two years. It does not apppear that any action has been brought by the opposing creditors, under the above section of the Act, they simply content themselves with opposing insolvent's discharge. Mere passiveness on the part of the insolvent when he contracts a debt, and an omission to tender unsolicited a statement of his circumstances at the time of his effecting a purchase does not, I think, constitute an offence under the Act. One would imagine that nowadays when such facilities are afforded the wholesale merchant by commercial agencies of acquiring information as to a person's solvency or standing, that no advances would be made to anyone without first consulting these institutions, or putting direct questions to the would-be purchaser as to his ability to pay. In the latter case if the debtor wilfully misrepresented his affairs, it would be a concealing the fact, within the statute. Under the 253rd section of the English Bankrupt Act of 1849, similar in substance to the clause above quoted in our own Act, it has been held that to constitute a fraudulent obtaining of goods under that clause, it was necessary that the bankrupt should have obtained the goods by means of representations which he knew to be false at the time he made them, it was not sufficient to prove that he received the goods from the seller, who by urgent persuasion induced him, the insolvent, to purchase them: *Reg.* v. *Boyd*, 5 Cox, C. C. 502. Assuming that McMicken was involved when he commenced business in Windsor, the incurring of these subsequent debts is not fraudulent because he was insolvent. It is only those debts that are contracted with intent to defraud the parties from whom the goods are purchased that would constitute a fraud within the Act, and that intent I think, must be manifested by the insolvent taking some means to conceal his true condition, or his making misrepresentations as to his standing at the time of his obtaining credit: See 15 U. C. C. P., 71. I cannot say, from all that was elicited from the bankrupt here, that he contracted the debt of Gault Brothers, or any of his debts, knowing himself to be unable to meet his engagements and concealing the fact with intent to defraud them. The defendant is entitled to an absolute discharge.

MUNICIPAL CASE.

IN THE MATTER OF APPEAL OF THOMAS PAXTON, FROM THE COURT OF REVISION FOR THE TOWNSHIP OF SANDWICH WEST, AS TO ASSESSMENT OF FIGHTING ISLAND.

Assessment—Fishery attached to land—Licenses—Value.

[Sandwich, May, 1869.]

LEGGATT, Co. J.—The whole of the island is assessed as real property at $4,500. From the evidence of the assessor it appears that in fixing the value of the island at this sum he took into consideration the fact that there are several fisheries on the island, and that he put an estimate upon each fishery in addition to the land proper, and that the island itself, aside from the fisheries, would not be worth over $700 if assessed in proportion to neighbouring farms on the main land. I am induced to think the assessor was wrong in determining the value of the island in the way he did. If we consider what the terms "land," "real property," and "real estate," as used in the Assessment Act, mean, we find that they include "all buildings or other things erected upon or affixed to the land, and all machinery or other things so affixed to any building as to form in law part of the realty, and all trees or underwood growing upon the lands, and all mines, minerals, quarries and fossils in and under the same, except mines belonging to Her Majesty." There is not a word about fisheries. If Mr. Paxton has a patent for Fighting Island, and the limits of the island are defined therein as extending to the channel bank around the island, it would not give him an exclusive right to fish in the waters adjoining or covering the channel bank. Unless the exclusive right to fish was given to Mr. Paxton expressly in his patent, he only takes the land covered with water subject to the right of all to use it for fishing and navigable purposes. The Minister of Marine and Fisheries, under the Fishery Act, has the power to grant fishing leases and licenses for fisheries and fishing wheresoever situated or carried on, and where the exclusive right of fishing does not already exist by law in favour of private persons. So that the right is not necessarily an incident attached, affixed or appurtenant to lands adjoining the river, but is a separate and distinct easement granted to the riparian proprietor adjoining the fishery, or any other person, at the option of the Minister of Marine. The principle involved in the Fishery Act is that of a right which has always been asserted by the Queen. Blackstone says that a free fishery or exclusive right of fishing in a public river is a royal franchise, and is considered as such in all countries where the feodal polity has prevailed. The statute points out how that right is to be exercised in this country, viz., by dividing the public or navigable rivers into limits, and granting exclusive licenses or limits to fish therein. The right to fish in these limits may be defined to be the same as a free fishery in England, that is, the right to fish irrespective of the ownership of the soil over which the water runs, or which may be adjoining, and therefore cannot be taxed as land or real property, or real estate, under the Assessment Act. The case of *The Buffalo and Lake Huron Railway Company* v. *The Town of Goderich*, 8 U. C. L. J. 17, is, I think, in point. McLean, J., in that case says: "There is, in my opinion, no doubt whatever that under our present Assessment Act (the definition of land is the same now as it was then) the water-covered part of the land cannot be taxed as part of the land, and cannot be looked upon apart from the water for the purpose of taxation." And Burns, J., says: "The legislature has defined what was meant by land, and there is no necessity for our extending that meaning in any way by the application of legal doctrines. The mentioning of mines, minerals, fossils, &c., convince me the legislature never intended to tax the use of water." "Everything," says Hickman, in his