

a perfect right to do this, and it cannot affect your verdict.

The jury found the defendants *Guilty*.

RAMSAY, J. It appears that the nuisance is, for the moment, at an end, and the prosecutors having intimated that they only desired to vindicate their rights, and to put a stop to a practice which it seems has been going on for years, the defendants will be admitted to bail on their own recognizances, to appear before this Court on the first day of next term. If between this and then there is no repetition of the offence, the punishment will probably be nominal, but if it be otherwise, the punishment will be sufficiently exemplary to be a lesson to defendants and a warning to others.

*Prevost and Geoffrion* for the prosecution.

*Macmaster and St. Pierre* for the defendants.

#### COURT OF QUEEN'S BENCH.

[CROWN SIDE.]

Montreal, April, 1880.

THE QUEEN V. EDOUARD JOBIN.

*Indictment under Insolvent Act of 1875—Continuation of proceedings after the repeal of the Act.*

RAMSAY, J. This is an indictment (No. 34) under the Insolvent Act of 1875 and the amending Acts. Leave having been granted to the defendant to withdraw his plea of "not guilty," he now moves to quash the indictment.

It is contended by the defendant, firstly: that the Insolvent Acts have been repealed since the accusation was laid, and that the saving clause which reserves *all proceedings* does not include a criminal prosecution. The precise words of the saving clause are the following:—

"Provided, that *all proceedings* under "The Insolvent Act of 1875," and the amending Acts, aforesaid, in any case where the estate of an insolvent has been vested in an official assignee before the passing of this Act, may be continued and completed thereunder; and the provisions of the said Acts hereby repealed shall continue to apply to such proceedings, and to every insolvent affected thereby, and to his estate and effects, and to all assignees and official assignees appointed or acting in respect thereof, in the same manner and with the effect as if this Act had not been passed."

There can be no doubt that no proceeding can be taken under a repealed statute for what was

done before, unless there be a saving clause sufficiently explicit to reserve the right, and a prosecution begun before the repeal, but not terminated, does not alter the matter. Nor will a penalty be considered to be reserved by construction. So where the civil code re-enacted the dispositions of the 76th section of the C. S. L. C., cap. 37, with regard to the obligation of Registrars to keep certain books and an index, and failed to re-enact the penalty contained in the statute, the Court of Appeal dismissed a *qui tam* action for the recovery of such penalty. *Montizambert & Dumontier*, Quebec, 6th March, 1877. We have, therefore, to inquire whether the saving clause quoted above is sufficient to reserve the right to a criminal prosecution. It will at once be conceded that the right to indict is virtually swept away, if the right to inflict the punishment does not remain. The form of the clause, in the case before us, strikes one immediately as being extraordinary. At all events, it does not precisely meet the terms of the section under which this indictment is drawn. The section 140 applies to "any insolvent who with regard to his estate," does certain things, whereas the saving clause applies to cases where the estate of an insolvent has been vested in an official assignee before the passing of the Act, and to insolvents affected by *such proceedings*, *i. e.*, proceedings with regard to a vested estate, and to his estate and effects. I asked Mr. Geoffrion how, from the indictment, it could be discovered that the accusation was within the limitation of the law as it now stands. He argued that the indictment was good when drawn, and that it would be a matter of proof that the estate had been vested in an official assignee. This answer appears to me to be hardly satisfactory, for it amounts to this, that in order to sustain the indictment it would be necessary to prove what was not pleaded, namely, that the insolvent's estate had been vested in an official assignee. It is true no foresight of the prosecution could have provided for this, but is it not the conclusion from this that the saving clause does not preserve, in a practical form, the criminal prosecution? If the repealing Act had simply reserved from its operation *all proceedings* begun before it was passed, I should have thought it covered all proceedings, whether civil or criminal, and the authorities cited by Mr. Kerr do not establish, I think, any doctrine contrary to this