

dered the punishment unequal and led to a preference of other methods. The old error of the Stuart reigns, for instance, was fining men as if they were richer than they were, or, as Selden says, "ten times as much as they were worth." The *modern error* has been to fine as if *all were poor*, and hence other punishments have been preferred to this, the most ancient, the most lenient and the most unexceptionable of all, and a source of revenue (than which none could be more proper) was first brought into odium, and now into disuse. The reasons of my provisions are that the system of punishment by fines seems to have been abused for want of precise provisions to protect and guard the general principle of the law. I have endeavored to supply these, so as to secure *efficiency* without *harshness*. The idea of not distraining where it would be ruinous, but imprisoning, I borrowed from an Imperial Statute, applying, however, to cases never arising in Canada. The rate of "a dollar or three days," &c., I borrow from the ordinary run of fines on summary convictions, because experience shews that that proportion is well adapted to its object, and the people have grown used to it, which is always an advantage, as people do not think that hard which they are accustomed to. The idea of one year's income being the *maximum* of a rich man's fine (for that is what my proposal amounts to) is to keep up the idea of *proportion* between the *maximum* FINE and the *maximum* of IMPRISONMENT. The rule *nisi* (or order in its nature) before a distress and the mode of relief from unlimited imprisonment, are checks against severity (the last being in idea borrowed from English reforms, &c., as to *insolvent debtors*), and the whole forming, I hope, a system which cannot be readily abused to any oppressive purpose, but may be justly claimed as much more merciful than the present, despite its amendment of that feature in it which prevents a fine being ever a mere dead letter, as in some cases, I believe, (owing to the Common Law principle I have referred to) it might be found.

26th.—That in some cases the principle of punishing all "heinous" crimes by Penitentiary might operate harshly, to obviate which objection it is PROPOSED—

That in any case of MANSLAUGHTER, if the jury find the offence to have been mitigated by the circumstances under