

as would render the services performed, according to their kind and value, at moderate wages, equivalent to the amount of the debt, it would be more reasonable than the system now in use. By the present system, the imprisonment of the debtor has anything but a tendency to enable him to pay his debt. It can only be considered as a punishment for not doing that which he has no means of doing before he is confined, and less probability of having after his confinement. If the non-payment of a just debt be a crime, it ought to be punished as other misdemeanors are, by the deprivation of liberty; but surely, like other crimes, the guilt should be proved before the punishment is inflicted; and it is hardly consonant with the well recognised principles on which public justice is administered, that the party who is injured, or may think an injury has been inflicted on him, should be at once the complainant, the judge, and the executioner;—yet this is really the case in the law of arrest for debt. The *animus* of guilt forms no criterion in this anomalous crime. If a man commits an injury on my person, I cannot punish him by fine or imprisonment without proving his guilty intent to the satisfaction of a judge and jury; and if he can show the alleged crime to have been the result of unavoidable accident, he meets with no punishment—indeed deserves none. But if that man owes me twenty pounds, and cannot pay me, I can at once imprison him, whether the non-payment arises from unforeseen misfortune, or from a deliberate design to cheat. The same punishment is thus awarded to unfortunate honesty as to reckless speculation or deliberate fraud. It was urged in defence of this system, that it operates as a protection to the creditor; and that in this Province, by various legislative enactments, the really honest debtor, who has done all in his power to pay his debts, and is only prevented by real misfortunes, may be speedily relieved from imprisonment; and, to a certain extent, this is undoubtedly the case. But why, if there is good reason for such investigations to release a debtor from prison, should they not be made preliminary to the imprisonment. It is rather placing the cart in advance of the horse, to let a man out of gaol because he shows that it was wrong to put him in. It surely would not be asking too much, before a creditor is allowed to visit his debtor with the punishment of felony, without its luxuries, that he should make out, by his own affidavit at least, some facts which show