

other than daily manual labor, or other constant lawful employment merely sufficient to his bare subsistence, shall be *fined* more than 120 (one hundred and twenty) dollars.

23rd.—That in all and every case of FINE in which *distress* has issued, if there “be not distress enough,” defendant shall be “put to his election,” to pay or be imprisoned for one year.

24th.—That where the defendant has been condemned to be imprisoned and FINE, then and then only shall the judgment of imprisonment be “till payment.” As thus—“that A. B. shall be imprisoned for _____ and then to pay _____, and to be further imprisoned till the same be paid.”

25th.—That anyone sentenced to be imprisoned and fined, *may, at the end of his imprisonment* (meaning that imprisonment which has no option), make proof of poverty to the satisfaction of a judge of the Queen’s Bench or Superior Court, with such advertisement of his petition as may enable any who will to oppose his pretensions; and if his pretensions be not refused, and *he has distinctly* proved that he has NOT MADE AWAY *with his means to escape his sentence*, he shall on such proof be discharged from custody.

REASONS FOR PROPOSITIONS FROM 19 TO 25.—That by ANCIENT COMMON LAW THE ONLY MODE OF COLLECTING A FINE IS BY DISTRESS. From which, and the fact that the word “chattel” is derived from “cattle,” and many circumstances such as my Lord Coke’s authority above as to *wainage*, and from all the historical reading I have had, I believe that in the infancy of the Common Law the whole of the people possessed cattle, or some share of rude wealth, like the Katlis and other cotemporaneous nations in a primitive state of agricultural existence, beyond, indeed, the mere hunting state of savage life, but still farther from *our* modern life; and wherever that life exists, the usual punishment for almost everything seems to be a fine, when it does not amount to a *forfeiture*. The progress of civilization, however, would alter this, and make some other mode of collecting fines necessary. The abuse of this last mode, as already referred to, made fines odious; the loss of the custom of learning the “countenance” or *means* of the defendant, and fining by the “countenance” has ren-