

40th.--All BONDS TO PEACE and BEHAVIOR, or either, &c.,† should be collectable against the PRINCIPALS in the same manner as a fine, else the more aggravated case (that involving breach of *specific engagement* as well as law) will be often the *least severely punished*.

For the reason of proposition thirty-nine, it is to establish absolute equality before the law as nearly as possible, and obviate the objection that the poor man's punishment is aggravated when he cannot or will not pay, and not the rich. It is true the provision is little more than theoretical, as wealthy law-breakers (such as the Marquis of ———, and others of past days) to meet whose cases provisions were (without avowal of motive) inserted in some English Statutes, are not common in Canada; but it is well that the law should be consistent in its provisions, that we should be able to say--“Our laws are equal; they enquire for former convictions in *all* non-capital cases,‡ and lay hold of the OFFENDER, whether rich or poor. If a man is so destitute that fines can only be collected by his imprisonment, and so shameless that this suffices not, then we collect by labor; and if rich and ‘saucy,’ we increase the amount of fine till he feels it in his pockets.”

CHAPTER II.

By the Common Law of England, coeval with the monarchy, “informations” were allowed to have the effect of “indictments” in cases of misdemeanor. Thus, anciently, mutilation and perpetual imprisonment, with other pains and penalties, might be inflicted without the intervention of a grand jury; and even in life and death the defendant might be put on trial without previous finding at the “appeal,” *i.e.*, mere accusation (a process only lately *abolished*) of the private party chiefly aggrieved; § and by Common Law there were several sorts of trial of which we have retained a memorial in the formal words, “How will you be tried?”—noting the former option of the prisoner.

† &c. here means bonds in *their nature*, and not other bonds than those to abstain from ill-doing, as I am not now treating of other bonds.

‡ The reason for not enquiring, &c., in capital cases is obvious.

See Thornton's Case.