

## SELECTIONS.

## DEBTOR AND CREDITOR.

We understand that a good deal of dissatisfaction exists in certain quarters at a defect in the new Bankruptcy Bill, which we have pointed out in our articles on the subject. We refer to the inadequacy of the means which it provides for the punishment of fraud, and to the dangers which are likely to arise from the abolition of imprisonment for debt if no remedy analogous in its character is provided. This ought to be a matter of the most serious consideration, for there can be no doubt that the new Bill as it stands is well calculated to encourage those relaxed notions of commercial morality which prevail so widely in the present day and which are the cause of such a vast amount of intricate and widely ramified misery. The new Bill is so limited, as we pointed out in our account of it, as to confine imprisonment for debt in future to the cases in which, as the law already stands, it is the act not of the party but of the court. The most important of these cases is the power given to the County Court judges to imprison for a term not exceeding six weeks persons whom they believe to be able to pay and to refuse out of mere contumacious obstinacy. The principle of the County Court Acts appears to us to be perfectly right, except that it does not go far enough, and we cannot see why it should not be extended to all courts whatever in which debts can be recovered or assets distributed. It is worth while to consider a little the way in which the system works, and the principles on which it depends. It may be a new reflection to some of our readers, but as a matter of fact great numbers of people in very different ranks of life are thoroughly well off and to all intents and purposes are rich people, and yet have hardly any money or any property of value in the whole world. A barrister or physician may be making an income counted by thousands a-year; but if he lives extravagantly, as many men in that position do, his actual realised property at a given moment may be worth nothing or next to it. The barrister, if a single man, may live in handsome furnished lodgings and do his business in chambers the furniture of which would not sell for 100*l.*, and that 100*l.* and whatever balance he happened to have at his bankers might well be all the property he had in the world. Suppose the law of imprisonment for debt abolished, and suppose judgment recovered against him, what would his creditor be able to take? A certain number of law books, and a few tables and chairs, and perhaps a riding horse on which the livery-stable keeper would have a lien for keep. To attach such a man's fees as they came in would be almost impossible. Yet he could in all probability get almost unlimited credit from tradesmen who knew nothing of him except the fact that he was a barrister in large practice. This is no doubt an

extreme case, and one which would not arise very often, but cases more or less resembling it might be found in almost every walk of life, down to the clever journeyman artisan who makes large wages, lives in lodgings, and spends his money as fast as he gets it. Such a man will often have a certain small amount of money stowed away somewhere where it is extremely difficult for his creditors to detect it. The mulish obstinacy with which he will sometimes defy the powers of the County Court, and refuse to pay, although he is perfectly well able to do so, would scarcely be believed by those who have not seen it. It is not worth while to make him a bankrupt, and go to the expense of having him examined and cross-examined and probed in all directions to find out what he has and where it is; but when the gaol doors are closed upon him, and he finds out that to protect his hoard he is foregoing wages of a greater amount and losing chances of employment which it may be very difficult to recover, he is pretty sure to pay if he possibly can. In short the plain truth is that the power of imprisonment for debt is a mild form of torture for the purpose of discovering concealed property. So long as the torture does not go beyond a reasonable and bearable degree, which must be assessed from time to time by the average feelings of the age in which it is permitted, it is not only a most efficient, but also a most proper and justifiable instrument to employ for the collection of debts. To rub red pepper into a man's eyes, or to apply red-hot plates to the soles of his feet and the calves of his legs for the purpose of making him pay what he owes, would no doubt cause many debts to be paid of the amount of which the creditors would otherwise be defrauded. These measures are identical in point of principle with the power of imprisonment which the County Court judges actually possess, and which we should wish to see extended to other judges. They are also not distinguishable in principle from pertinacious dunning, but the difference in the degree of suffering inflicted makes all the difference in a moral point of view.

There are, however, several considerations which ought to be most carefully kept in view whenever this branch of the law is systematically regulated and set upon a solid foundation. In the first place, the power of inflicting imprisonment ought, as under the County Court Acts, to be vested in the judge, and not, as under the existing law, in the party; and in the second place the judge ought to be most careful to use it only against defaulters themselves, and not, as was so frequently the case under the old law, against solvent relations, who it is supposed will prefer paying their relation's debts to seeing him in gaol.

In the second place it ought not to be forgotten that imprisonment for debt ought to be made to serve two distinct purposes which should never be confounded. The first purpose is that of torture for the extraction of money from those who have it and will not