

Prisons Ordinance
Power to make rules.

By the fifth section "it is provided that it shall be lawful for His Excellency the Governor, from time to time, to make such rules and regulations as to him shall seem fit touching:—

1. The duties of the officers of such public gaol;
2. The classification;
3. Diet;
4. Treatment; and
5. Correction, of the prisoners therein;

and generally to prescribe such rules as may be necessary for the good discipline of any public gaol, and the safe custody of the prisoners therein. The Ordinance does not authorize the Governor to delegate these powers.

By the seventh section, all such rules and regulations are made as binding upon the officers of the gaol and the prisoners as if they had been enacted by the Ordinance.

In order to give effect to such rules and regulations so authorized, it is made lawful for the Governor (sec. 8) to enforce any penalty not exceeding £20 for any offence against such rules and regulations, to be recovered in a summary way.

Visiting Justices.

Visiting Justices are to be appointed by virtue of section 9; by which it is enacted that it shall be lawful for the Governor to nominate and appoint one or more Justices of the Peace, who shall consent thereto, to be visitors of each gaol in the Colony. Their first duty is to visit the gaol at least once a month, and oftener if occasion shall require.

Duties.

They are also bound once at least in every quarter of a year to make a report in writing to the Governor, or to such other officer as he may appoint for the purpose (sec. 13). Such report is to be made respecting—

- (1.) The state and condition of the prison.
- (2.) The repairs, additions, or alterations which have been made or are required.
- (3.) Any abuse which they may have observed, or of which they may have received information, in the management of the prison.
- (4.) The general state of the prisoners as to morals, discipline, employment, hard labour; and the observance of the rules in force for the time being for the government of the prison.

The right of the Judges of the Supreme Court to visit and examine gaols, incident to their office, is expressly reserved by the Ordinance; and moreover a right is given to any Justice of the Peace, whenever he shall think fit, to enter and examine any gaol.

The Sheriff of the district,* or Visiting Justice, is empowered by the Ordinance (sec. 10) to set prisoners sentenced to imprisonment, without hard labour, to work, the same not being severe, if they do not maintain themselves; and it is provided that no such prisoner who has the means of maintaining himself, shall have any claim to be supported at the public expense.

Prison offences.

With respect to any description of prisoner confined in any gaol, the Prisons Ordinance gives a Visiting Justice the power to hear and determine (that is, in the ordinary course of law relating to summary convictions,) complaints touching any of the following charges, which are declared to be offences under the Ordinance (sec. 11).

- (a.) Disobedience of the rules and regulations of the prison (and the Ordinance will apply whether the rules are made under it or under the Secondary Punishment Acts).
- (b.) Assaults by any person confined in gaol upon another, where no dangerous wound or bruise is given.
- (c.) Profane cursing and swearing.
- (d.) Indecent behaviour.
- (e.) Irreverent behaviour at the ordinary divine service or prayer.

And further, the Visiting Justice has the same power in respect of prisoners under conviction for any crime, in cases of—

- (f.) Idleness or negligence in work; or,
- (g.) Wilful mismanagement of work.

In respect of the foregoing offences, the Visiting Justices may, on conviction, sentence the offender to be confined in a solitary cell on bread and water for any term not exceeding seven days.

Furthermore, the Ordinance provides (sec. 12) that if any prisoner under sentence for any crime shall be guilty of repeated offences against the rules of the prison, or shall be guilty of any greater offence than before mentioned, complaint may be made to two or more Justices, of whom a Visiting Justice may or may not be one, and such Justices have power upon oath to inquire into and determine the same (that is, in the ordinary course of summary convictions), and on conviction, to order the offender to be punished by close confinement for any term not exceeding one calendar month; or by personal correction, in cases of prisoners convicted of felony or sentenced to hard labour.

On this section it is observed in *The New Zealand Justice of the Peace*, p. 282:—"The language of this enactment is certainly vague and not unlikely to lead to misapprehension. In the first place, the expression 'shall be guilty of any greater offence,' must surely mean any greater offence of a similar kind; for if the Justices were to proceed under this section to deal with a case of a grave, indictable, or otherwise punishable offence, committed in the prison, they might thereby defeat justice; as no person can be twice punished for the same offence. It is therefore only in cases where, on full investigation of the circumstances beforehand, they have reason to believe that the maximum punishment mentioned in this section would be sufficient, that they ought to proceed under the Ordinance, leaving graver cases of offences, punishable otherwise than under prison regulations, to be disposed of in the ordinary course of law. Secondly, the phrase 'personal correction,' undefined and unlimited, leaves it very doubtful what species and amount of punishment can be safely awarded. Such is the extent of punishment—besides enforcing penalties not exceeding £20—directed by the prison rules, which can be awarded summarily to persons under sentences of imprisonment with or without hard labour, and to such punishment prisoners sentenced to penal servitude also are apparently liable."

* The gaoler is substituted for the Sheriff by "The Gaolers Act, 1858" (sec. 6).