

The Ordinance (sec. 15), inflicts penalties not exceeding £20, upon persons bringing or attempting to bring wine, spirits, or fermented liquor into any gaol, to be recovered in a summary way; and further there is an enactment (sec. 16) therein, making it felony to do certain things, or use any means, in order to aid and assist prisoners in escaping. *Prisons Ordinance. Penalties.*

The Governor is empowered (sec. 17) in cases where a gaol wants repairs, or is to be rebuilt, or where disease has broken out in it, or it is overcrowded, or for the purpose of carrying out the Ordinance, to order the removal of debtors and prisoners to some other gaol to be appointed by him; and when the gaol is again fit for their reception they must be moved back (sec. 18). *Removal of prisoners.*

In any of the cases above mentioned, or upon emergency, when it is necessary that such a removal should take place before an order can be procured from the Governor, the Visiting Justices may issue an order to the keeper of the gaol to remove such debtors and prisoners to such other gaol or place of confinement within his jurisdiction as shall be specified in such order, subject to the same restrictions as to duration as required in case of the Governor.

Such order of the Visiting Justices, together with a report of the causes thereof, is forthwith to be notified to the Governor and to the Sheriff of the district.

It is also provided (sec. 20) that the Sheriff of any district may remove any prisoner from one gaol within his jurisdiction to another within the same jurisdiction, and in case of illness to any hospital or infirmary.

2. "*The Secondary Punishments Act, 1854*," as amended by "*The Secondary Punishments Act Amendment Act, 1863*," contains the following provisions:—The Act of 1854 abolishes the punishment of transportation, and substitutes certain terms of penal servitude within the Colony for terms of transportation (secs. 1 to 8 inclusive); and it makes provisions against escape from penal servitude, and for the punishment of persons guilty of escape, or assisting therein (sec. 11 to 16 inclusive). *Secondary Punishments Act, 1854.*

The ninth section of the Act provides that every person who shall be kept in penal servitude during the term of his servitude shall be employed on the roads or public works, or otherwise kept to hard labour, in such part of the Colony as the Governor* shall direct, and either in irons or under such other restraint, and subject to such correction as may be necessary for his safe custody and strict discipline. For the purpose of being so employed, every such convict may be removed from place to place, either by sea or land, and may be confined in such public gaol, at such penal station, or in such place of confinement, or may otherwise be kept in custody as the Governor shall from time to time direct. But it is provided that the Governor shall not be authorized to issue any directions or regulations which shall permit the assignment of any prisoner under such sentence to any person or persons whatever. This ninth clause originally contained a proviso that every person convicted of a capital offence, whose punishment should have been commuted to penal servitude for life, should be confined in some public gaol in close custody, and be kept to hard labour in separate confinement for the remainder of his life. This proviso was never attempted to be carried out strictly; and it was repealed by "*The Secondary Punishments Act Amendment Act, 1863*." *Employment of prisoners in penal servitude.*

It was further provided (section 17, Act 1854) that the powers of the Governor under the ninth section, or any of them, might be delegated by him, by instructions under his hand, to the Superintendent of any Province, on such terms and conditions, and subject to such limitations and restrictions as might be prescribed on that behalf: but there is no such power of delegation with respect to the 10th section, which, as amended by the Act of 1863, provides as follows:—

(Section 10.) The Governor may from time to time make such rules and regulations as to him shall seem meet for the

- (1.) Employment,
- (2.) Safe custody,
- (3.) Management, and
- (4.) Discipline

of convicts under sentence of penal servitude; and to enforce the observance of such rules and regulations, by

- (1.) Solitary confinement for any period not exceeding one month at any one time, or for three months in periods of one month, at intervals of at least one month each.
- (2.) By placing in irons.
- (3.) Whipping not exceeding fifty lashes at one time.
- (4.) By imprisonment not exceeding twelve months, in addition to the original sentence; or
- (5.) By such other prison discipline as may be prescribed on that behalf.

Provided that no rule or regulation awarding such punishment as aforesaid shall come into operation until a copy thereof shall have been first published in the *New Zealand Gazette*.

3. "*The Gaolers Act, 1858*," (section 1) provides that the Superintendent of each Province shall have the power of appointing a gaoler for every public gaol within the Province, who is to hold office during the pleasure of the Superintendent. Such gaoler (section 2) is to have custody of all debtors and criminals in such gaol, and is to be liable for the escape of either debtor or criminal through his wilful neglect or default, but not otherwise. By the fourth section every debtor or criminal as soon as he is delivered within the door of any gaol to the gaoler or an officer of the gaol, is to be taken to be in the legal custody of the gaoler, and the liability of the sheriff or other officer who delivered the prisoner is thereupon to cease. By the sixth section of this Act, the power given to the sheriff of the district, as well as to Visiting Justices, under the tenth section of the *Prisons Ordinance*, to set prisoners not sentenced to hard labour, to work, and the power of the sheriff to remove a prisoner from one gaol within his jurisdiction to another, or in case of illness, to the hospital or infirmary, are transferred to the gaoler.† It is further provided by the fifth section of that Act, that nothing contained in it shall take away or abridge the powers of Superintendents and Provincial Councils to make laws for the regulation *Gaolers Act, 1858.*

* See post, "or Superintendent."

† There may be some difficulty in applying the latter provision to gaolers, as they will seldom have jurisdiction or authority over more than one gaol.