

Existing Law.

With regard to the management of gaols generally (except as regards debtors), and the punishment of prisoners other than those under sentences of penal servitude, it appears that the power of making rules and regulations vested by the Prison Ordinance in the Governor, apparently without power of delegation, remain in him undisputed with respect to the Provinces of Wellington, Hawke's Bay, and New Plymouth; that they are professedly transferred through the Lieutenant-Governor of New Munster to the Superintendents of Nelson and Marlborough, to the exclusion of the Governor; that in Canterbury and Otago they are given to the Superintendents without limiting the Governor's exercise of them; and that in Auckland they are expressly taken, or pretended to be taken, away from the Governor.

There is, therefore, on the face of the existing prison laws a considerable amount of difficulty and complexity, which, it might be anticipated would produce misconception, inconsistencies, irregularities, and inconveniences: and we are therefore not surprised to find that in most places in the Colony the prison authorities have had but an indefinite understanding of their real relations, duties, and responsibilities. In the first place, with regard to the appointment, status, and functions of "Visiting Justices," there seems to have been much misconception in some parts of the Colony. It seems at least very doubtful whether these functionaries can be considered "officers of the gaol," within the meaning of the enactments giving powers for making regulations concerning the management of gaols. They are really Justices of the Peace, whose special duties are, first, of a judicial character in respect of prison discipline; and secondly, of a ministerial kind, including the examination into the condition of the gaol, the conduct of its officers, and the observance of its lawful regulations, and regularly reporting thereon; and as their powers and duties are expressly pointed out by the Prisons Ordinance, it seems that any regulations pretending to affect the Visiting Justices, at variance with the provisions of that Ordinance, would be inoperative; while it would appear also that regulations affecting them even if not inconsistent therewith, would be *ultra vires*. Now we find from the evidence received by us, that in some cases, at all events, the Visiting Justices are very uncertain about their position and duties, and in some cases they evidently act within their powers, but do much more than they are bound by law to do (especially at Auckland); that in several cases they are unaware of, or neglect their plainly laid down statutory duties; that in others they assume powers which they do not possess by law, and that in some cases they are directed to do more than the general law requires by regulations which are probably *ultra vires*.

VISITING JUSTICES.

Appointment.

As to the appointment of the Visiting Justices, we presume that in the cases where the powers of the Governor have devolved through empowering Ordinances on Superintendents, the Superintendents are the proper persons to appoint such functionaries. The evidence on this subject is to the following effect:—

- (1.) At Wellington, the Visiting Justice examined says, "I was appointed by the Superintendent, I think."—[Wellington—WOODWARD.] But the empowering Ordinance of Wellington, as we have seen, does not mention the Prisons Ordinance on its Schedule.
- (2.) At Lyttelton there is but one Visiting Justice, who is also medical attendant of the gaol, and has therefore to report on his own conduct in that capacity; and he is appointed by the Superintendent.—[Lyttelton—DONALD.]
- (3.) At Hokitika it does not appear by whom the Visiting Justices are appointed; but they report to the Colonial Secretary.—[Hokitika—SALE.]
- (4.) At Nelson the Visiting Justices are appointed by the Superintendent,—[Nelson—WELLS] who seems to have authority for that purpose under the Nelson Empowering Ordinance.
- (5.) At Auckland there are two Visiting Justices appointed by the Superintendent.
- (6.) At New Plymouth, it does not appear by whom the Visiting Justice is appointed.
- (7.) At Napier it does not appear from the report by whom the Visiting Justice is appointed, but if it is by the Superintendent, it would seem to be without authority, as the Napier empowering Ordinance is the same as that of Wellington.
- (8.) At Dunedin the Visiting Justices are appointed by the Provincial Government.—[Dunedin—CALDWELL.]
- (9.) At Invercargill there are four Visiting Justices appointed by the Superintendent of Southland.—[Invercargill—FRASER.]
- (10.) As to Picton it does not appear if there be a Visiting Justice or not.—[CAWTE's Report.]

Proceeding now to inquire how the duties of Visiting Justices are performed, we recur to the provisions of the Prisons Ordinance, which besides giving such Justices certain power of adjudication upon breaches of the Ordinance, and of the regulations made for the management of prison prescribes:

- (1.) That the Visiting Justices (*i.e.*, each Visiting Justice) shall personally visit such gaol at least once a month, and oftener if occasion shall require; and
- (2.) That the Visiting Justices shall once at least, in every quarter of a year, make a report to the Governor or to such officer as he may appoint, concerning the matters specifically mentioned in the thirteenth section of the Ordinance as above set out.

It seems to be assumed—and probably rightly—that where the Superintendent has power to appoint the Visiting Justices, he is the person to whom they ought to make their reports. Now we find with regard to these matters that at

Reports.

- (1.) At Wellington, the Visiting Justices do not make regular monthly visits; that they report half-yearly (instead of quarterly) to the Superintendent; that the reports are not published [WOODWARD] and that the gaoler was not aware of the existence of any reports.—[READ.]
- (2.) At Lyttelton, the Visiting Justice was never asked for a report, and never deemed it necessary to make one.—[DONALD.]
- (2a.) As to Christchurch, the Visiting Justice visits irregularly, and has made no reports except as to want of accommodation.—[BOWEN.]