substantially reduced. The general principle underlying this Act is that the grave step of sending a defaulter to prison should only be taken as a result of a considered decision of the Justices, and that, with certain exceptions, this decision shall only be taken after an inquiry as to the means of the defaulter. Imprisonment as an "automatic" sequel to default will largely disappear.

A *resume* of the report is set out hereunder, with a view to determining in what respects it is desirable that the law in New Zealand as regards imprisonment for default should be amended to conform with the trend of modern thought and with the principle laid down in the report.

Scope of Committee's Inquiry.

The inquiry was not a general inquiry into the subject of imprisonment for debt, but was confined to orders for imprisonment made by Courts of Summary Jurisdiction in default of payment of fines, and for the enforcement of payments under maintenance and affiliation orders, and of the payment of rates. Whilst in the main the report is apposite to the administration of the law in this country, it of necessity touches on various phases of procedure which are not applicable here. For instance, that portion of the report dealing with imprisonment for rates need cause us no concern. In England rates are recoverable by special process very similar to that under which fines are recovered. In New Zealand, apart from special provision in the Rating Act for the sale of the rateable property, arrears of rates are recoverable in the same manner as other civil debts. This review is accordingly confined to the question of the enforcement of maintenance orders and the payment of fines.

Maintenance Orders.

The report discloses a number of defects in the law in England relating to the enforcement of maintenance and affiliation orders, which defects do not exist here. For many years our law in this regard has been in advance of that in England, and a number of provisions made last year in England in pursuance of the Committee's recommendations have been law here since 1910.

The chief anachronism of the English law to which the Committee found it necessary to direct its attention was the lack of any clear guidance to the Courts as to the policy to be followed in deciding whether to commit to prison on proof of arrears, the Court not being required to satisfy itself, before committing a person to prison for default of payments under a maintenance order, that the man's failure to pay was wilful in the sense that he had the means to pay and had not paid. The Justices had complete discretion in the matter of committal. The Committee considered that "the law should be amended in such a way as to place on the Court a definite obligation to investigate the question how far failure to pay is due to circumstances beyond the defendant's own control, and to secure that imprisonment shall only be ordered if the Court after such inquiry is satisfied that the default is due to wilful refusal or culpable neglect. The important thing is to secure that, as far as possible, no man is committed to prison unless the Court is satisfied that he has or had or by reasonable effort could have had the means to comply with the order." There was a further difficulty under the English law in that no provision was made (as there is here) for remission of arrears, and if the Court decided not to commit on the ground that the default was not wilful, the arrears remained unsatisfied. The Courts, it was stated, might therefore be driven to impose a short term of unmerited imprisonment in order that when the man comes out of prison he may make a fresh start clear of arrears. Following the Committee's report, the law in England was amended in 1935 so as to remedy this defect, and also to prohibit committal if the Justices, after inquiry *in the defendant's presence*, are of the opinion that the failure of the defendant to pay was not due either to wilful refusal or to his culpable neglect.

Under the New Zealand law, before a person can be committed to prison for default in payment of maintenance-moneys, he must first be charged under section 61 of the Destitute Persons Act, 1910, with making default "without reasonable cause." If he can show that he has not had the means to pay, or that his default is not due to his wilful refusal or culpable neglect, he is not convicted. In 1926 the Act was amended to throw the burden of proving "reasonable cause" upon *the defendant*. This provision is, I think, not unreasonable, and appears to be in accord with the principle which has been laid down, that as a general rule the affirmative is to be proved and not the negative of any fact that is alleged. The principle on which the rule is based is that it is often impossible for the informant to prove the negative facts, but easy for the defendant, the negative being peculiarly within his own knowledge. This is particularly so as regards ascertaining the means of a defendant and his ability to pay. In England the onus is now placed *on the Court* to satisfy itself from the evidence of the parties, supplemented in such way as may be possible by inquiry or otherwise, as to the defendant's ability to pay. In this connection the Committee recommended the employment of special investigating officers to assist the Court by making independent inquiries in such cases. This recommendation has not so far been adopted in England, but in New Zealand the services of the Maintenance Officers are freely used for this purpose.

It will, I think, be generally conceded that the law with regard to the enforcement of maintenance orders in this country is administered reasonably and with restraint, the view taken being that it is better for every one concerned if the defendant can be induced to make some reasonable payment rather than that he should be committed to prison, thus being a charge on the State and his earning-capacity brought to an end. Imprisonment is usually resorted to only as a last resort. Under our Act, with the amendment suggested below, a defendant should be adequately safeguarded from improper imprisonment. There is, nevertheless, what I consider to be a serious defect in our Act. In England a defaulter must be dealt with in his presence. In New Zealand, if the defendant does not appear upon summons, the Court may nevertheless (and frequently does) make an order for imprisonment *in absentia*. This follows the general rule in summary cases that the defendant's appearance