

LEGISLATIVE COUNCIL.

PRISONS.

THIS Bill consolidates the existing law respecting prisons, which is to be found in "The Prisons Act, 1873," and its amendments of 1879 and 1881. We have not included that portion of "The Secondary Punishment Act, 1854," which substituted penal servitude for transportation, as its provisions more properly belong to the criminal code.

The general arrangement of the Bill has been altered, and a few new provisions are suggested, some of which have been adapted from recent English legislation, and the others seem necessary to give effect to the administration of the present system. All the changes suggested are indicated in the usual manner, and to the chief of these attention is now directed.

Clause 9. Express power is given to make regulations for remission of portions of sentences by the mark-system. This system is in force at present; but its use is sanctioned by inference rather than by direct authority, inasmuch as sections 22 and 23 of the Act of 1873 permit the convicting Justices to forfeit marks earned by a prisoner proved guilty of offences against prison regulations. It seems desirable there should be the express power we suggest.

Clauses 13 and 14 are adaptations from the recent Imperial Act, 40 and 41 Vict., cap. 21. Both these clauses seem to be of such a nature as to recommend their adoption by the Legislature. With clause 13 has been taken in a part of section 18 of the Act of 1873 as to keeping debtors separate from criminal prisoners. Since the abolition of imprisonment for debt by the Act of 1874 there are, strictly speaking, no *debtors*; but persons may, in certain cases, be arrested on *mesne* process under the Act referred to and under the Resident Magistrates Act of 1868. Persons also may be arrested for debt at suit of the Crown under "The Crown Suits Act, 1881." The first subsection of clause 13 therefore covers all the persons who may now be arrested for the causes stated, while the second subsection will extend to all persons who are excepted from the operation of "The Imprisonment for Debt Abolition Act, 1874."

Clause 14 has been rearranged, retaining, however, the substance of the English provision.

Clause 17 is new, and is adapted from the Act quoted in the margin.

In clause 20 power is given to make regulations for inspection of prisons; and clause 22 gives power to appoint an Inspector of Prisons. It is provided that the person now holding such office shall be deemed to have been appointed under the Act.

Clause 26. The new matter explains itself.

In clause 28 the words in italics seem necessary.

Clause 38 is a modification of section 48 of the Act of 1873.

Clause 43. The words "District Court" seem to be necessary.

Clause 45. The word "certified" before "prisoners' aid society" we suggest should be omitted. Apparently it was intended that such society should be certified under the Act then in force relating to friendly societies, but it seems to us that the many regulations to which such societies are subject would probably prevent prisoners' aid societies from being formed. There is no reason, however, why some authority should not be empowered to give such societies a status; and we therefore suggest the words shown in italics.

Clause 47 is new, and is taken from the Imperial Act already alluded to.

Clause 49. A change has been necessitated by the alteration in the law above referred to respecting debtors. The original section declared the gaoler should have the custody of all *debtors* and criminals in the prison. Arrest for debt has been abolished, and imprisonment now follows upon the neglect of a person to obey the order of a Court to pay money; but there is no such thing as a "debtor" in the sense in which the term was formerly used.

It is observable that no punishment is prescribed in this clause for allowing a prisoner to escape. It is only stated he "shall be liable to answer." Escapes are of two kinds: voluntary and negligent. The first, where complicity is apparent on the part of the gaoler; the other, where the prisoner escapes against the will of the gaoler. At common law a voluntary escape amounts to the same kind of crime as the offence of which the prisoner is guilty, and for which he is in custody; but this offence is now covered by the provisions of clause 31, where actual aid to escape is declared a felony. A negligent escape is a misdemeanour, and the person guilty would be liable at common law to fine or imprisonment, or both, at the discretion of the Court, which, can, of course, mete out such punishment as the facts may justify.

In clause 50, for a like reason to that above stated, we propose to omit the words "debtor in execution," and insert those in italics. If the Legislature should think that a gaoler ought to be responsible for the escape of a person committed to prison for disobeying an order of Court for the payment of money, then, of course, this enactment would require amplification.

Clause 52 more accurately defines "legal custody."

Clause 53. A change has been made in this section. The present provision is that the gaoler shall prepare a calendar of prisoners in the same way as a gaoler in England delivers such calendar at Assize Courts and Quarter Sessions. It seems more convenient that there should be a power in the colony to regulate the practice in this respect.

Clause 55 is new. It frequently happens that a person in prison is charged with another offence, and, while Justices have power to order a prisoner charged with an offence to be remanded and again brought before them, there is no express power in such a case as this clause provides for. We understand the practice is sometimes to hold a Court at the prison; but in grave cases it seems more desirable the prisoner should be brought up at the usual courthouse. The Law

Amendment Act of 1868, section 6, provides that a prisoner in custody for another offence may be brought up for *trial* upon indictment found for a fresh offence without writ of *habeas corpus*. This clause extends this principle to cases before Justices. No provision is made here as to bringing up witnesses in prison, this being a matter connected with the law of evidence rather than of prison discipline.

Clause 57. We suggest that the words in italics should be substituted for the present provision, which requires the authority of a Judge of the Supreme or District Court for the removal of a prisoner to hospital. It is surely enough if the order be made by a Resident Magistrate or Visiting Justices. Delay must frequently occur in making application to a Judge at a distance from the place where the prisoner is situated.

Clause 64 is the usual reference to unrepealed Acts.

Clause 65 repeals the existing Acts, with the necessary saving clauses.

Sections 26, 51, and 57 of the Act of 1873 have been entirely omitted. The first of these seems to us unnecessary, and the others have ceased to be operative.

A. J. JOHNSTON.
W. S. REID.

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This PUBLIC BILL originated in the LEGISLATIVE COUNCIL, and having this day passed as now printed is transmitted to the HOUSE OF REPRESENTATIVES for its concurrence.

Legislative Council,
1st August, 1882.

[STATUTES REVISION COMMISSION.]

PRISONS.

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A BILL INTITULED

Title.

AN ACT to consolidate and amend the Law relating to Prisons.

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

Short Title.

1. The Short Title of this Act is "The Prisons Act, 1882." 5

Interpretation.

2. In this Act, if not inconsistent with the context,—

1873, No. 73, s. 3.

"Criminal prisoner" means any prisoner charged with or convicted of a crime :

"Gaoler" means the gaoler, keeper, or other chief officer of a prison :

"Police-gaol" means any police-station declared to be a police-gaol under the provisions of this Act : 10

"Prison" includes not only all gaols, houses, buildings, enclosures, hulks, and places hereby or hereunder declared to be or constituted public prisons, but also the airing-grounds, or other grounds, or buildings, occupied by prison officers for the use of the prison and contiguous thereto : 15

"Regulations" mean regulations made under this Act, or declared to be in force by virtue hereof :

"This Act" includes regulations made under this Act, or declared to be in force by virtue hereof. 20

"Common gaol" or "gaol" to be read as being the same as prison or police gaol. 1881, No. 11, s. 3.

3. In any unrepealed Act or Ordinance, or in any rules or regulations made thereunder, or in any warrant or other instrument, whether or not the form of the same is prescribed by any such Act, Ordinance, rules, or regulations, the words "common gaol" or "gaol" shall, for all purposes whatsoever, subject to the provisions of this Act, be read as being the same as the words "prison" or "police-gaol" respectively, according to the length of the term of imprisonment to which the person who may be affected by such Act, Ordinance, rule, warrant, or instrument shall have been sentenced or committed. 25

PART I.

MAINTENANCE AND GOVERNMENT OF PRISONS. 30

(1.) *How Prisons constituted.*

Existing prisons and police-gaols to continue as such. 1873, No. 73, s. 6. 1879, No. 8, s. 2.

4. Every house, building, enclosure, and place which immediately before the commencement of this Act was used as, or deemed to be, a public gaol or prison or police-gaol respectively, shall for all purposes whatsoever be and be deemed to be and to have been duly constituted a prison or police-gaol respectively, and shall continue and be a prison or police-gaol respectively under this Act. 35

5. The Governor may from time to time, by Proclamation published in the *Gazette*,—

Prisons may be proclaimed. 1873, No. 73, s. 7.

(1.) Declare any house, building, enclosure, or place to be a prison, and from and after the gazetting of any such Proclamation, or from any later time specified in the Proclamation, such house, building, enclosure, or place shall be deemed to be a prison ; 40

Hulks may be declared prisons. *Ib.*, s. 9.

(2.) Appoint any hulk, ship, or floating prison (hereinafter referred to as "hulk") to be used as and to be a prison for the reception and safe keeping of prisoners, and may from time to time define the limits and boundaries around such hulk within which no person shall come, and the place of embarking and landing prisoners to and from such hulk ; 45

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- 5 (3.) Appoint any place or places in New Zealand at which male offenders under any sentence of penal servitude may be kept, and every place so appointed shall be deemed to be a prison, but only for male offenders under such sentence as aforesaid; but, whether such place or places shall have been appointed or not, such male offenders may be kept in any prison;
- 10 (4.) Declare any police-station to be a police-gaol, and all the provisions of this Act as to prisons shall apply to such police-gaols so far as applicable, save that prisoners whose sentences shall exceed thirty days' imprisonment may not be detained therein, except for such period as may elapse before they can be conveyed to a prison;
- 15 (5.) Declare that any prison or police-gaol shall no longer be a prison or police-gaol whenever the same has become unfit for the purpose, or unnecessary, or for any other reason ought to cease to be a prison or police-gaol; and upon the gazetting of such Proclamation, or from and after any later date fixed in such Proclamation for the purpose, such prison or police-gaol respectively shall cease to be a prison or police-gaol.
- 20 Any such Proclamation as aforesaid may from time to time be altered or revoked by the Governor.

Places for imprisonment of male prisoners sentenced to penal servitude. 1873, No. 73, s. 10.

Police-stations may be declared police-gaols. 1881, No. 11, s. 2.

Unfit prisons may be discontinued. 1873, No. 73, s. 8.

(2.) *Appointment of Officers.*

6. The Governor from time to time, as occasion may require, shall appoint to every prison—
- 25 A gaoler, a surgeon duly registered under *any Act for the time being in force relating to the registration of medical practitioners*, and such subordinate officers as may be necessary.
- Any constable may be appointed to be the gaoler of any police-gaol. 1881, No. 11, s. 2.
- To every prison in which females are confined— 1873, No. 73, s. 11.
- 30 *there shall be appointed a matron*, and such subordinate female officers as may be necessary.
7. Every officer of a prison under this Act shall hold his office during the pleasure of the Governor, and be paid such salary as the Governor shall direct out of moneys appropriated for the purpose by the General Assembly.
- 35 8. Whenever any officer of a prison is suspended, or removed from or resigns his office, or dies, the officer so suspended, removed, or resigning, and his family and the family of every such deceased officer, shall quit the possession of the house or apartments in which he or they have previously resided by virtue of such office, when required so to do by notice under the hands of two or more of the Visiting Justices.
- 40 If such officer or family neglect to give such possession for forty-eight hours after such notice as aforesaid has been given to him or them, any two Justices, upon proof made to them of such suspension, removal, resignation, or death, and of the service of such notice, and of such neglect or refusal to comply therewith, may, by warrant under their hands, direct any constable, within a period therein
- 45 named, to enter by force, if necessary, into such house or apartment, and deliver possession thereof to some person appointed by the *Minister of Justice* to receive such possession.

Appointment of officers of gaols. *Ib.*, s. 11.

1881, No. 11, s. 2.
1873, No. 73, s. 11.

Tenure of office of officers. *Ib.*, s. 13.

Officer of prison on ceasing to hold office to give up possession. *Ib.*, s. 14.

(3.) *Discipline in Prisons.*

9. The Governor may from time to time, by Proclamation, make regulations 50 as to him shall seem fit touching—

Regulations as to management of prisons and discipline therein. *Ib.*, ss. 15, 21.

1873, No. 73, ss. 15,
21.

- (1.) The duties of the officers of prisons ;
- (2.) The construction and description of cells for separate confinement or punishment of persons confined in prisons, and the certifying the same as fit for the purpose ;
- (3.) The safe custody, the classification, hours of labour, mode of employment, separation, diet, instruction, treatment, and correction of the prisoners confined in prisons ;
- (4.) For specially regulating the employment, safe custody, management, and discipline of prisoners under sentence of penal servitude ;
- (5.) Regulating what labour or employment shall be deemed hard labour, and for classifying such labour ;
- (6.) *Providing for the remission of portions of sentences by marks to be earned by the good conduct of the prisoners ;*
- (7.) *Any other purpose or object for which by this Act it is provided regulations either general or special may be made ;*
- (8.) And generally may prescribe all such regulations as may be necessary for the good management and government of such prisons, and the discipline and safe custody of the prisoners therein, and not only while therein but also while employed at labour beyond the limits of the prison.

May be of universal
or local application.
Ibid.

10. All or any of such regulations may be made to apply generally to all prisons or to any one or more prisons specified in any such Proclamation, as the Governor may think fit ; and the Governor may from time to time alter or revoke any such regulations as aforesaid, or any rules, regulations, orders, or directions in force in any prison at the commencement of this Act, and make others in lieu thereof respectively.

No regulations shall be valid which are inconsistent with any provision of this Act.

Regulations as to
diet.
Ib., s. 16.

11. In the making of such regulations as to diet, regard shall be had, so far as relates to convicted criminal prisoners, to the nature of the labour required from or performed by such prisoners, so that the allowance of food may be duly apportioned thereto.

Female prisoners to
be kept separate.
Ib., s. 17.

12. In every prison containing female prisoners as well as males, the women shall be imprisoned in separate buildings or separate parts of the same buildings in such manner, in so far as practicable, as to prevent their seeing, conversing, or holding any intercourse with the men.

New Clauses.

As to prisoners
confined for non-
payment of sums in
the nature of debts.
Ib., s. 18.
40 and 41 Vict., c. 21,
s. 38, altered.

13. Special regulations may be made with respect to the classification and treatment of the following persons, and for separating them altogether from the criminal prisoners :—

- (1.) *Persons arrested upon any legal process, or held to bail for any debt under any law for the time being in force ;*
- (2.) *Persons imprisoned for non-compliance with the order of any Court to pay a sum of money, or imprisoned in respect of the default of a distress to satisfy a sum of money adjudged to be paid by order of a Court or a Justice.*

But so that such regulations are in mitigation and not in increase of the effect of such imprisonment.

As to unconvicted
prisoners and certain
other prisoners.
40 and 41 Vict.,
c. 21, s. 39, altered.

14. *In order to mark the difference between the treatment of persons unconvicted of crime and in law presumably innocent, during the period of their detention in prison for safe custody only, and the treatment of prisoners*

who have been convicted of crime, during the period of their detention in prison for the purpose of punishment, special regulations may be made for the treatment of prisoners confined for safe custody only. Such regulations may provide for all or any of the following matters:—

- 5 (1.) With respect to the retention by any such prisoner of the possession of any books, papers, or documents in his possession at the time of his arrest, and which may not be required for evidence against him, and are not reasonably suspected of forming part of property improperly acquired by him, or are not for some special reason required to be taken from him for the purposes of justice;
- 10 (2.) With respect to communications between any such prisoner, his solicitor, and friends, so as to secure to such prisoner as unrestricted and private communication between him, his solicitor, and his friends as may be possible, having regard only to the necessity of preventing any tampering with evidence and any plans for escape, or other like consideration;
- 15 (3.) With respect to arrangements whereby such prisoners may provide themselves with articles of diet, or may be furnished with a sufficient quantity of wholesome food, and may be protected from being called upon to perform any unaccustomed tasks or offices;
- 20 (4.) And generally regulating the confinement of such prisoners in such manner as to make it as little as possible oppressive, due regard only being had to their safe custody, to the necessity of preserving order and good government in the place in which they are confined, and to the physical and moral well-being of the prisoners themselves.

25 15. In every prison, prisoners convicted of misdemeanour and not sentenced to hard labour shall be divided into at least two divisions, one of which shall be called the first division.

Division of prisoners.
First-division not
criminal prisoners.
1873, No. 73, s. 53.

A misdemeanant of the first division shall not be deemed to be a criminal prisoner within the meaning of this Act.

30 16. Whenever any person convicted of misdemeanour is sentenced to imprisonment without hard labour, the Court or Judge before whom such person has been tried may order, if such Court or Judge think fit, that such person shall be treated as a misdemeanant of the first division.

As to prisoners
convicted without
hard labour.
Ibid.

New Clause.

35 17. Any person imprisoned under any rule, order, or attachment for contempt of any Court shall be treated as a misdemeanant of the first division.

As to prisoners
committed for
contempt of Court.
40 and 41 Vict., c. 21,
s. 41.

40 18. Any person in custody under sentence of imprisonment with hard labour or penal servitude may be employed at hard labour beyond the precincts of the prison in which he may be lodged; and every such person, notwithstanding such employment, shall, as respects the provisions of this Act, be deemed to be within the limits of the prison in which he shall be lodged.

Hard-labour
prisoners may be
employed outside
the prison.
1873, No. 73, s. 19.

(4.) Visiting Justices and Inspector.

45 19. For each prison in the colony the Governor shall from time to time nominate two or more Justices, with their consent, to be visitors of such prison, and the Justices so appointed, or one or more of them, shall have the powers and duties following:—

Appointment of
Visiting Justices.
Ib., s. 37.

60 (1.) From time to time visit and inspect such prison, examine into the state of the buildings, and consider what alterations or repairs may appear necessary, strict regard being had to the requisitions of this Act with respect to the separation of prisoners and enforcement of hard labour in prisons;

Visitation of prisons.

- (2.) Examine into the conduct of the respective officers, and the treatment and conduct of the prisoners, the means of setting them to work, the amount of their earnings, and the expenses attending the prison;
- (3.) Inquire into all abuses within the prison, and shall, within the powers of their commission as Justices, take cognizance of matters of pressing necessity, and regulate the same;
- (4.) Once at least in each year make a report to the *Minister of Justice upon all matters provided for in this section.*

Power to make rules as to Visiting Justices. 1873, No. 73, s. 38. Visits to prison by any Justice. *Ib.*, s. 39.

20. The Governor may from time to time make regulations with respect to the duties of the Visiting Justices, and also for the inspection of prisons by an *Inspector to be appointed as hereinafter provided.*

21. Any Justice of the Peace usually resident in the place at which a prison is, or any member of the Legislature, may, whenever he thinks fit, enter into and examine the condition of such prison, and of the prisoners therein, and he may enter any observations he may think fit to make, in reference to the condition of the prison, or abuses therein, in the Visitor's-book, to be kept by the gaoler; and it shall be the duty of the gaoler to draw the attention of the Visiting Justices, at their next visit to the prison, to any entries made in the said book.

But such Justice of the Peace, or member of the Legislature, shall not be entitled, in pursuance of this section, to visit any prisoner under sentence of death, or to communicate with any prisoner, except in reference to his treatment in prison, or to some complaint that he may make as to such treatment.

New Clause.

22. The Governor may from time to time appoint an Inspector of Prisons to inspect all prisons, and every such Inspector shall, by virtue of his appointment, have full power to enter into any prison from time to time, and to examine and inspect the same in accordance with any regulations made as hereinafter provided.

The Inspector shall be paid such salary as shall from time to time be appropriated by the General Assembly, and the person now holding the office of Inspector of Prisons shall be deemed to have been appointed under this Act.

(5.) *Offences in Relation to Prisons.*

23. Any Visiting Justice or Resident Magistrate shall have power to hear complaints respecting any offences by any prisoner against any regulations, and may examine any person touching such offences, and *adjudicate thereon*; and may punish such offences by ordering any offender—

- (1.) To be kept in close or other confinement, either with or without irons, for a time to be specified, and that either in a light or dark cell, or part of the time in a dark cell and part in a light cell, but the time of confinement in a dark cell shall not exceed forty-eight hours; or
- (2.) To wear irons while working either inside or outside the prison, for a time to be specified; or
- (3.) To be fed upon bread and water only, during any time not exceeding fourteen days; or
- (4.) To undergo any two or more of such punishments; or
- (5.) To forfeit, in addition to any such punishment, a number of marks not exceeding such number as under the regulations it is necessary to earn to obtain fourteen days' remission of sentence.

24. Any Visiting Justice or Resident Magistrate imposing any such punishments shall enter in a separate book, called the "punishment-book," a statement of the nature of any offence that he has punished in pursuance of this

Appointment of Inspector of Prisons.

Visiting Justice or Resident Magistrate to punish prison offences. *Ib.*, s. 22.

Punishment-book to be kept. *Ibid.*

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section, with the addition of the name of the offender, the date of the offence, and the amount of punishment.

25. If any criminal prisoner is guilty of repeated offences against any of the regulations the gaoler shall report the same to the Visiting Justices or one of them; and any two of such Justices, or any Resident Magistrate having jurisdiction in the place in which the prison is, shall have power to inquire upon oath and to *adjudicate thereon*.

Adjudication on criminal prisoners guilty of repeated prison offences. 1873, No. 73, s. 23.

26. If such Justices or Resident Magistrate shall find such criminal prisoner guilty of the offence charged, they may order him to be kept at hard labour, with or without irons, for any term not exceeding one year, and in their discretion to be kept in solitary confinement for any portion of such term not exceeding one month, in periods none of which shall exceed one week, and which shall be at intervals of at least one week;

May be condemned to hard labour, or solitary confinement, or flogging. Ibid.

15 And may direct that, during such confinement, such prisoner shall be deprived of any particular portion of the ordinary diet or allowances of such prisoners, or forfeit the whole or any number of marks earned by such prisoners under the regulations; or, in the case of prisoners convicted of felony or sentenced to hard labour or penal servitude, by personal correction not exceeding fifty lashes at any one time.

20 27. Such period of imprisonment, or solitary confinement as aforesaid, shall not be deemed or taken as part of the period of imprisonment, or hard labour, or penal servitude to which such prisoner shall have been previously sentenced.

Limit to periods of solitary confinement. Ibid.

25 28. All corporal punishments within the prison shall be attended by the gaoler and the surgeon.

Corporal punishments to be superintended by gaoler and surgeon. Ibid., s. 25.

The surgeon shall give such orders for preventing injury to health in the infliction of such punishment as he may deem necessary, and it shall be the duty of the gaoler to carry them into effect.

30 The gaoler shall enter in the punishment-book the hour at which the punishment is inflicted, the number of lashes, and any orders which the surgeon may have given on the occasion.

35 29. No prisoner shall be kept in irons or under mechanical restraint for more than twenty-four hours without an order in writing from a Visiting Justice, specifying the cause thereof and the time during which the prisoner is to be kept in irons or under mechanical restraint, which order shall be preserved by the gaoler as his warrant.

No prisoner to be kept in irons except by order of a Visiting Justice. Ibid., s. 24.

40 30. No prisoner shall be put in irons or under mechanical restraint by the gaoler of any prison, except in case of urgent necessity; and the particulars of every such case shall be forthwith entered in the gaoler's journal, and notice thereof forthwith given to one of the Visiting Justices.

Use of irons by gaoler. Ibid.

31. Every person who—

Assisting prisoners to escape. Ibid., s. 27.

(1.) Aids any prisoner in escaping, or attempting to escape, from any prison; or

45 (2.) Rescues or attempts to rescue, or aids in rescuing or attempting to rescue, any prisoner from the custody of any gaoler, warder, overseer, or other officer of a prison, whether such prisoner shall be in such custody within or outside of such prison; or,

50 (3.) With intent to facilitate the escape of any prisoner, conveys or causes to be conveyed into any prison any mask, dress, or other disguise, or any letter, or any other article or thing,

shall be guilty of felony, and on conviction be sentenced to penal servitude for a term not exceeding ten years, or to imprisonment with hard labour for a term not exceeding two years.

Conveying to
prisoners means of
escape, &c.
1873, No. 73, s. 27.

Offences against
prison regulations.
Ib., s. 28.

32. Every person who conveys, or causes to be conveyed, into any prison any mask or other disguise, or any instrument or arms proper to facilitate the escape of any prisoner, and delivers or causes the same to be delivered to any prisoner in such prison, or to any other person therein for the use of such prisoner, without the consent or privity of the gaoler of the prison, shall be deemed to have delivered such mask or disguise, instrument or arms, with intent to aid and assist such prisoner to escape or attempt to escape. 5

33. Every person who, *in contravention of this Act or any regulations*,—

- (1.) Brings or attempts to bring any wines or spirituous or fermented liquors into any prison ; 10
- (2.) Holds or attempts to hold any communication with any prisoner undergoing sentence ;
- (3.) Delivers, or in any manner whatsoever endeavours or attempts to deliver or causes to be delivered, to any such prisoner, or introduces, or attempts or endeavours to introduce, or causes to be introduced, into any prison, any money, article of clothing, letter, tobacco, or any other article or thing whatsoever ; 15
- (4.) Delivers or causes to be delivered to any other person any such money, article of clothing, letter, tobacco, article or thing, for the purpose of being conveyed or introduced as aforesaid ; 20
- (5.) Secretes or leaves upon or about any place where any such prisoner as aforesaid is usually employed, any such money, article of clothing, letter, tobacco, article, or thing, for the purpose of being found or received by any such prisoner ;
- (6.) In any other manner conveys, or causes to be conveyed, to any such prisoner any such money, article of clothing, letter, tobacco, article, or thing ; 25
- (7.) For any purposes aforesaid lurks or loiters about any road or other public works, or any prison, or any place in or at which prisoners may be confined or employed ; or 30
- (8.) Knowingly harbours any prisoner who has escaped from a prison or from custody as aforesaid,

shall be liable to be apprehended without warrant by any constable, gaoler, turnkey, warder, or other person in whose charge or custody any such prisoner may then be, and be detained by such constable or other person, and kept in safe custody until he can be brought before any Resident Magistrate, or before two or more Justices of the Peace, who shall have power to hear and determine such offence ; 35

And, upon conviction, any such offender shall for any such offence forfeit and pay a penalty not exceeding twenty pounds, and in default of payment, or in the discretion of such Resident Magistrate or Justices, be imprisoned and kept to hard labour for any period not exceeding three months. 40

Lurking about prison.
Ibid.

34. Any person loitering about any road or other public works, or any prison, or any place in or at which prisoners may be confined or employed, who shall refuse or neglect to depart therefrom upon being duly warned by any constable, gaoler, warder, or authorized person so to do, shall be deemed and taken to be lurking or loitering about such road or public works, or prison or place, for the purposes mentioned in the *last foregoing* section. 45

Punishment for
officer admitting
spirituous liquors or
tobacco into prisons.
Ib., s. 29.

35. Every officer of a prison who suffers any spirituous or fermented liquor or tobacco to be sold or used therein contrary to the regulations shall, on conviction, be sentenced to imprisonment for a term not exceeding six months, or to a penalty not exceeding twenty pounds, or both, in the discretion of the con- 50

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victing Justices, and shall, in addition to any other punishment, forfeit his office and all arrears of salary due to him.

36. Every officer of a prison or any other person who, contrary to the regulations, conveys or attempts to convey any letter or other document, or any article whatever not allowed by such regulations, into or out of any prison, shall, on conviction, incur a penalty not exceeding ten pounds, and, if an officer of the prison, shall forfeit his office and all arrears of salary due to him.

Punishment for officer carrying letters into and out of prisons. 1873, No. 73, s. 30.

But this section shall not apply in cases where the offender is liable to a more severe punishment under any other provision of this Act.

37. The Visiting Justices shall cause to be affixed, in a conspicuous place outside the prison, a notice setting forth the penalties that will be incurred by persons committing any offence in contravention of the six last preceding sections.

Notice of penalties to be placed outside of prisons. Ib., s. 31.

(6.) *As to Penal Servitude.*

38. When a prisoner has been sentenced to penal servitude, he may be removed by the gaoler from one prison to any other prison in the colony in which he may have been directed by the Judge of any competent Court to undergo his sentence.

Penal-servitude convicts may be removed to any prison to undergo their sentence. Ib., s. 48, modified.

39. Every person who shall be kept in penal servitude shall, during the term of his servitude, be employed at hard labour in some prison, or on the roads or public works, or otherwise be kept to hard labour in such part of New Zealand as the Governor shall in that behalf direct, and either in irons or under such other restraint and subject to such correction as may appear to the Governor to be necessary for his safe custody and strict discipline.

Penal-servitude convicts to be kept at hard labour. Ib., s. 20.

- For the purpose of being so employed aforesaid, every such person may be removed from place to place, either by sea or land, and may be confined in such prison, at such penal establishment, or in such place of confinement, or otherwise be kept in custody as the Governor shall from time to time direct.

May be removed from place to place for such purpose.

(7.) *Escape from Penal Servitude.*

40. If any person who shall have been sentenced to be kept in penal servitude for any term other than for life shall be afterwards at large within any part of New Zealand, without some lawful cause, before the expiration of the term of such servitude, every such offender so being at large, and being thereof lawfully convicted, shall be kept in penal servitude for any term not exceeding five years, to commence and to be computed from the expiration of the term of the original sentence.

Escape of convicts, how punished. Ib., s. 32.

41. If any male offender who shall have been sentenced to be kept in penal servitude for the term of his life, or who, having been convicted of any capital offence, shall have had his sentence commuted to penal servitude for life, or shall have had mercy extended to him on condition of his being kept in penal servitude for life, shall afterwards be found at large within any part of New Zealand without some lawful cause, every such offender so being at large, and being thereof lawfully convicted, shall be kept in solitary confinement during such periods, not exceeding one month at a time or for three months in the space of one year, in periods of one month, at intervals of at least one month each, as the Court shall direct.

Escape of convicts under sentence for life. Ib., s. 33.

42. Whoever shall discover and prosecute to conviction, or shall give such information as shall lead to the conviction, of any offender being at large, contrary to the provisions of the two last preceding sections of this Act, shall be entitled to a reward not exceeding twenty pounds, at the discretion of the Judge, for every such offender so being convicted.

Reward for the discovery, &c., of escaped convicts. Ib., s. 34.

PART II.

LAW OF PRISONS.

(1.) *General Provisions.*

Dating of sentences of imprisonment. 1873, No. 73, s. 35.

43. All sentences of imprisonment on any offenders convicted at any sittings of the Supreme Court, or in any District Court, shall date from the first day of holding such sittings, and all other sentences of imprisonment from the date of signing any warrant of commitment under which any offender is detained in custody, unless such prisoner was at large at the date of signing such warrant, in which case the sentence shall date from the time of arrest of the prisoner. 5

When term of imprisonment expires on Sunday. Ibid.

44. Any prisoner confined in a prison, whose term of imprisonment would, according to his sentence, or the regulations relating to remission of sentences, expire on any Sunday, shall be entitled to his discharge on the Saturday next preceding such Sunday; and every gaoler of every prison having the custody of any such prisoner as aforesaid is hereby required and authorized to discharge such prisoner on the Saturday next preceding any such Sunday. 10

Allowance to discharged prisoner. Ib., s. 36.

45. Where any prisoner is discharged from prison, the Visiting Justices may order a sum of money, not exceeding two pounds, to be paid out of any moneys appropriated for the purpose by the General Assembly or otherwise under their control, by the gaoler to the prisoner himself, or to the treasurer of a certified prisoners' aid society [the objects of which have been approved by the Minister of Justice], on such Gaoler receiving from such society an undertaking in writing, signed by the secretary thereof, to apply the same for the benefit of the prisoner; 15

Or, if that becomes impossible, to appropriate the whole or any unapplied part thereof for the benefit of such other prisoner or prisoners discharged from the said prison as the Visiting Justices may direct. 25

Inquest on prisoners. Ib., s. 40.

46. An inquest shall be held on the body of every prisoner who may die within the prison.

Where it is practicable, one clear day shall intervene between the day of the death and the day of the holding the inquest; and in no case shall any officer of the prison, or any prisoner confined in the prison, be a juror on such inquest. 30

Disqualified jurors. 40 and 41 Vict., c. 21, s. 44.

47. In no case shall any person engaged in any sort of trade or dealing with the prison be a juror on such inquest.

Description of prison in writ. 1873, No. 73, s. 41.

48. Any writ, warrant, or other legal instrument addressed to the gaoler of a particular prison, describing the prison by its situation, or other definite description, shall be valid, by whatever title such prison is usually known, or whatever be the description of the prison. 35

Gaolers to have charge of prison. Ib., s. 42.

49. Every gaoler shall have the charge and superintendence of the prison for which he is appointed, and the custody of all persons lawfully imprisoned within the same, and he shall be liable to answer for the escape of any such person from his custody, whenever such escape shall happen by or through his wilful neglect and default, but not otherwise. 40

Gaolers liable for escapes to an action of damages, and not of debt. Ib., s. 43.

50. If any debtor in execution person arrested upon any legal process or otherwise held to bail for any debt under any law for the time being in force shall escape out of legal custody, the gaoler or other person having custody of such person shall be liable to an action for damages sustained by the person or persons at whose suit such debtor was imprisoned person was arrested or held to bail as aforesaid, and shall not be liable to an action of debt in consequence of such escape. 45

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51. Every prisoner shall be deemed to be in the legal custody of the gaoler as soon as he shall be delivered within the door of any prison to the gaoler or some other person employed under him in the custody of prisoners in such prison, and the liability of the Sheriff or other person delivering such prisoner shall cease on such delivery as aforesaid.

Persons to be deemed in custody of gaoler when delivered at prison.
1873, No. 73, s. 44.

New Clause.

52. Every prisoner shall also be deemed to be in legal custody whenever he is being taken to or from or whenever he is confined in any prison in which he may be lawfully confined, or whenever he is working outside or is otherwise beyond the walls of any such prison, in custody or under the control of a prison officer belonging to such prison; and any constable or other officer acting under the order of any Justice having power to commit a prisoner to prison may convey a prisoner to or from any prison to or from which he may be legally committed or removed.

Legal custody of prisoners.
40 and 41 Vict., c. 21, s. 28.

53. The gaoler of every prison shall deliver, or cause to be delivered, to the Judges of the Supreme Court and of District Courts respectively a calendar of all prisoners in custody for trial at each forthcoming sitting for trial of criminal cases in such Courts respectively. *Such calendar may be in such form as from time to time prescribed by regulations, and until any such regulation is made shall be in the form heretofore in use.*

Gaoler of prison to deliver calendar.
1873, No. 73, s. 45.

(2.) *Removal of Prisoners.*

54. A prisoner may be brought up for trial, and may be removed by or under the direction of the gaoler from one prison to another, or from one place of confinement to another, to which such prisoner may be legally removed, for the purpose of being tried or undergoing his sentence.

Removal of prisoners by gaoler for trial or punishment.
Ib., s. 46.

New Clause.

55. When a prisoner in custody is charged with an offence [not being the offence or cause for which he is in custody], any Court or Justices may, by order in writing, direct the gaoler to bring up such prisoner before such Court or such Justices as shall then be present to be dealt with according to law, and the said gaoler shall obey such order and bring up such prisoner accordingly, and after he shall have been so dealt with he shall be restored to his former custody without any further process or authority for that purpose, and without prejudice to any cause or matter for which he was originally in custody.

Prisoners may be brought before Courts without writ of *habeas corpus*.

Provided that this provision shall not apply to any matter which may be dealt with by Visiting Justices under this Act or regulations.

56. (1.) Whenever it shall appear to the Governor to be necessary that the prisoners or any of them confined in any prison within the colony shall be removed from such prison in order that the same may be repaired, enlarged, or rebuilt, or on account of any disease therein, or on account of the overcrowded state of such prison, or for any of the purposes of this Act, and due notice thereof in writing shall, by order of the Governor, be given to the gaoler of the prison, it shall be lawful for such gaoler to remove such prisoners or any of them to such other prison or place of confinement as the Governor shall appoint.

Removal of prisoners in other cases by order of Governor.
Ib., s. 47.

- (2.) When any such prison as in this section mentioned shall be made fit for the reception and safe-keeping of such prisoners, it shall be lawful for the said gaoler to remove back thereto all such prisoners as shall then be in his custody.

- (3.) Whenever the removal of any prisoners shall become necessary for any of the reasons in this section mentioned or from any other emergency, and it shall be impossible previous thereto to obtain such order as aforesaid, it shall be

In cases of emergency, may be removed by order of Visiting Justices.

Removal of prisoners to hospital and thence back to prison.
1873, No. 73, ss. 48, 49, modified.

Removal of prisoners to hospital and thence back to prison.
1873, No. 73, ss. 48, 49, modified.

Governor may direct removal of prisoners.
Ib., s. 50.

Punishment of prisoners for misconduct during removal from one prison to another.
Ib., s. 52.

Removal of prisoner not to be deemed an escape.
Ib., s. 46.

Recovery of penalties.
Ib., s. 54.

Form of indictment for escape, &c.
Ib., s. 55.

Proof of previous sentence.
Ib., s. 56.

References to repealed Acts to apply to this Act.

lawful for the Visiting Justices to issue an order to the gaoler of such prison to remove such prisoners to such other prison or place of confinement as shall be specified in such order.

Every such order of the Visiting Justices, together with a report of the causes thereof, shall be forthwith notified to the Governor and also to the gaoler of the prison to which such prisoners are ordered to be removed. 5

57. In case of the illness of any prisoner he may, by order of a Judge of the Supreme Court or of a District Court, a Resident Magistrate or the Visiting Justices of a prison, be removed by the gaoler from any prison to any hospital or infirmary to be mentioned in such order, as occasion may require. 10

In any such case a prisoner shall be deemed to remain in the lawful custody of the gaoler who removed him; and such gaoler shall, under a like order as aforesaid, have power to remove such prisoner from such hospital or infirmary back to the prison from which he was removed.

58. The Governor, by warrant under his hand, from time to time, when and as he may deem necessary, may direct the removal from any prison of any prisoner confined therein to any other prison within New Zealand; and upon every such removal every such prisoner shall be subject to be kept at such prison for the residue of his sentence, or until removed by legal authority. 15

59. When a prisoner shall be received into a prison by removal from another prison, it shall be lawful, under the regulations in force in the prison into which he is so received, to punish him for any misconduct which he may have committed in the course of such removal, or within forty-eight hours before the commencement of the same, as if such misconduct had been committed by him within the prison into which he is so received. 20

60. No prisoner whilst in the legal custody of a gaoler under any of the foregoing sections of this Act shall be deemed to have escaped, although he may be taken into different jurisdictions or different places of confinement. 25

MISCELLANEOUS.

61. Offences under this Act, with the exception of felonies and of offences for the mode of trial of which express provision is made by this Act, shall be prosecuted summarily before two or more Justices of the Peace, and in manner directed by "The Justices of the Peace Act, 1882." 30

62. In any indictment against any offender for being found at large contrary to the provisions of the fortieth and forty-first sections of this Act, and also in any indictment against any person who shall rescue or attempt to rescue, or assist in rescuing or attempting to rescue, any prisoner from custody, or who shall aid or assist any prisoner to escape from such custody, it shall be sufficient to charge and allege the sentence or order made for the imprisonment of such prisoner, without charging or alleging any indictment, trial, or conviction of such offender. 40

63. The certificate in writing, under the hand of the Registrar or other officer having the custody of the records of the Court where any sentence or order of imprisonment shall have been made or recorded, containing the substance of such sentence or order, shall be sufficient evidence thereof, and shall be received in evidence of such sentence or order, upon proof of the signature and official character of the person signing the same. 45

New Clauses.

64. Where any unrepealed Act of the General Assembly or other enactment refers to any Act hereby repealed, such unrepealed Act or enactment shall be deemed to refer to this Act.

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65. "The Prisons Act, 1873," "The Prisons Act Amendment Act, 1879," and "The Prisons Act Amendment Act, 1881," are hereby repealed. But this repeal shall not affect any such repealed Act, or any regulations made thereunder, as to all or any of the following matters:

- 5 (1.) Any sentence passed, or other act or thing duly done;
- (2.) Any right acquired or liability incurred;
- (3.) Any penalty, forfeiture, or other punishment incurred in respect of any offence against any such Act or regulations;
- 10 (4.) Any Proclamation, appointment, rule, regulation, order, or direction in force on the passing of this Act. And any such Proclamation, appointment, rule, regulation, order, or direction may be rescinded, altered, or otherwise dealt with as if the same had been made under this Act; and all rules or regulations in force in any prison at the commencement of this Act shall remain in force until altered in
- 15 manner in this Act provided.

By Authority: GEORGE DIDSBUY, Government Printer, Wellington.—1882.