

Hon. Mr. Mason.

## SUMMARY PENALTIES.

### ANALYSIS.

Title.	11. Report to be made on <i>nulla bona</i> return of distress warrant.
1. Short Title. Commencement.	12. Imprisonment of defendant in default of sufficient distress.
2. Interpretation.	13. Scale of imprisonment for non-payment of money.
3. Means of offender to be taken into consideration.	14. Remission of part of sentence of imprisonment for non-payment of money on partial payment.
4. Default for non-payment of fine, &c., not to be fixed at time of hearing.	15. Defendant refusing to obey order may be imprisoned.
5. Restrictions on imprisonment of persons under twenty-one years of age.	16. Warrant of commitment where punishment is imprisonment in first instance.
6. Payment of or security for fines, &c.	17. Power to impose cumulative terms of imprisonment.
7. Supervision of defendant where time for payment is allowed.	18. Alteration of warrant of commitment in respect of the prison named.
8. Service of notice of conviction or order.	19. Forms.
9. Warrant of distress.	20. Repeals and savings.
10. Immediate execution.	

### A BILL INTITULED

AN ACT to amend the Justices of the Peace Act, 1927, Title.  
in relation to the Penalties imposed on Summary  
Conviction or by Orders of Justices.

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

1. (1) This Act may be cited as the Summary Penalties Act, 1939, and shall be read together with and deemed part of Part II of the Justices of the Peace Act, 1927 (hereinafter referred to as the principal Act).

Short Title.  
See Reprint  
of Statutes,  
Vol. II, p. 351

- Commencement. (2) This Act shall come into force on the *first* day of *January*, nineteen hundred and *forty*.
- Interpretation. 2. In this Act, unless the context otherwise requires, references to the sum adjudged to be paid by a conviction or to the sum ordered to be paid by an order shall be deemed to include any sum of money adjudged or ordered to be paid by the conviction or order, whether as a fine or for costs or otherwise. 5
- Means of offender to be taken into consideration. Cf. 4 & 5 Geo. V, c. 58, s. 5 (1) (Imp.) 3. In fixing the amount of any fine to be imposed on a defendant the Justices shall take into consideration, amongst other things, the means of the defendant so far as they appear or are known to the Justices. 10
- Default for non-payment of fine, &c., not to be fixed at time of hearing. Cf. 25 & 26 Geo. V, c. 46, s. 1 (1) (Imp.) 4. Except as provided in section *ten* of this Act, where Justices by a conviction or order adjudge or order any person to pay a sum of money they shall not on that occasion impose on him a period of imprisonment in default of payment of that sum. 15
- Restrictions on imprisonment of persons under twenty-one years of age. 5. (1) Where a defendant appears to the Justices hearing an information or complaint to be under the age of twenty-one years, they shall not adjudge that he be imprisoned or impose on him a period of imprisonment in default of payment of any sum adjudged or ordered to be paid unless they have obtained and considered information as to his character and circumstances and have formed the opinion that no other method of dealing with him is appropriate. 20
- (2) No Magistrate shall issue his warrant of commitment under this Act in respect of the default of sufficient distress to satisfy any sum adjudged or ordered to be paid by a defendant who appears to the Magistrate to be under the age of twenty-one years unless he has obtained and considered information as to the character and circumstances of the defendant and has formed the opinion that no other method of dealing with him is appropriate. 25
- Payment of or security for fines, &c. Cf. 1927, No. 37, ss. 118, 119, 120 6. (1) Where Justices by a conviction or order adjudge or order any person to pay a sum of money, they may do all or any of the following things, namely:— 30
- (a) Allow time for payment: 35
- (b) Direct payment to be made by instalments: 40
- (c) Direct payment to be made to such person or persons and in such place or places as they may specify:

(d) Direct that the person liable shall be at liberty to enter into a bond to the satisfaction of the Justices in favour of such person as may be specified by the Justices, with or without a surety or sureties, conditioned for the payment of the sum adjudged or ordered to be paid or of any instalment or instalments thereof.

(2) Where a sum is directed to be paid by instalments and default is made in the payment of any one instalment, the same proceedings may be taken as if default had been made in the payment of all the instalments then remaining unpaid.

7. (1) Where any person is adjudged or ordered to pay a sum of money and the Justices allow time for payment or direct payment to be made by instalments, the Justices may order that he be placed under the supervision of a Probation Officer or such other person as they shall appoint until the sum is paid.

Supervision of defendant where time for payment is allowed.  
Cf. 25 & 26 Geo. V, c. 46, ss. 5, 6 (Imp.)

(2) In any case where it appears to the Justices that the person so adjudged or ordered to pay any sum has not attained the age of twenty-one years, an order shall be made under this section unless the Justices are satisfied that it is undesirable or impracticable to place him under supervision.

(3) Where the Justices decide under the *last preceding* subsection that a person appearing to them to be under the age of twenty-one years shall not be placed under supervision, a record of the decision shall be entered in the Criminal Record Book.

8. Except in the case of a conviction for an offence against section forty-one or section forty-three of the Police Offences Act, 1927, where any person who by a conviction or order is adjudged or ordered to pay a sum of money or to do some other act is not present or represented on the occasion of the conviction or order, and no direction is made under subsection *one* of section *ten* of this Act authorizing immediate execution, there shall, as soon as may be thereafter, be delivered to that person, or sent by post addressed to him at his last or usual place of abode, a notice of the terms of the conviction or order:

Service of notice of conviction or order.  
Ibid., s. 3  
Cf. 1927, No. 37, ss. 94, 115  
See Reprint of Statutes, Vol. II, p. 523

Provided that failure to comply with the provisions of this section shall not of itself invalidate any subsequent proceedings.

Warrant of  
distress.

*Cf.* 1927,  
No. 37,  
ss. 96, 104

9. (1) In all cases where any sum of money ordered or adjudged to be paid is not paid within *fourteen* days after the conviction or order, or within such further time as may be allowed or fixed for the payment thereof, any Justice may issue his warrant of distress (No. 20) for the purpose of levying the same or so much thereof as remains unpaid. 5

(2) A warrant of distress may be issued under this Act, notwithstanding that the Act under which the proceedings are taken makes no provision for the levy by distress of the sum adjudged or ordered to be paid, or provides for the imprisonment of the defendant upon default in payment thereof. 10

Immediate  
execution.

*Cf.* 4 & 5  
Geo. V, c. 58,  
s. 1 (1), (4)  
(Imp.)

10. (1) If the Justices hearing a case are of opinion— 15

(a) That the defendant is of sufficient means to pay forthwith the sum adjudged or ordered to be paid; or

(b) That the defendant has no fixed place of abode; or 20

(c) That for any other reason, having reference to the gravity of the offence, the character of the defendant, or other special circumstances, execution should issue forthwith,—

they may direct that a warrant of distress (No. 20) may be issued forthwith, without waiting for the expiration of the period mentioned in the *last preceding* section, or they may impose on the defendant a period of imprisonment in default of payment of the sum adjudged or ordered to be paid (not exceeding the appropriate maximum period prescribed by section *thirteen* of this Act), and may direct that a warrant of commitment (No. 23) be issued in the first instance. 25 30

(2) If the Justices make a direction under the *last preceding* subsection a record of the direction and of the grounds upon which it is made shall be entered in the Criminal Record Book. 35

(3) Where Justices convict a defendant of an offence against section forty-one or section forty-three of the Police Offences Act, 1927, and adjudge him to pay a sum of money, they may on that occasion impose on him a period of imprisonment in default of payment of the sum adjudged to be paid (not exceeding the 40

See Reprint  
of Statutes,  
Vol. II, p. 523

appropriate maximum period prescribed by section *thirteen* of this Act), and a warrant of commitment may be issued immediately thereafter in the same manner as if the Justices had directed accordingly under subsection *one* of this section.

(4) A warrant of commitment under this section may be issued by any Justice and shall require that the defendant be imprisoned in some convenient prison therein named for such time as the Justices have fixed at the hearing, unless the sum adjudged or ordered to be paid, and also, if the Justice issuing the warrant thinks fit so to order, the costs and charges of the commitment and conveying of the defendant to prison (the amount thereof being ascertained and stated in the warrant), are sooner paid.

**11.** Where the person having the execution of a warrant of distress makes a return (No. 21) that he could find no sufficient goods or chattels whereon he could levy the sums mentioned in the warrant, together with the costs of or occasioned by the levying of the distress, he shall make a report as to the means of the defendant so far as he has been able to ascertain them.

**12.** (1) Subject to the provisions of this section, where the person having the execution of a warrant of distress makes a return (No. 21) as mentioned in the *last preceding* section, or where he returns that after reasonable inquiry the defendant could not be found, any Magistrate may issue his warrant of commitment (No. 22). That warrant shall require that the defendant be imprisoned in some convenient prison therein named for such time as the Magistrate thinks reasonable (not exceeding the appropriate maximum period prescribed by the *next succeeding* section) unless the amount due in respect of the conviction or order, and also, if the Magistrate issuing the warrant thinks fit so to order, the costs and charges of the commitment and conveying of the defendant to prison (the amount thereof being ascertained and stated in the warrant), are sooner paid.

*Cf.* 1927,  
No. 37, s. 103

Report to be  
made on  
*nulla bona*  
return of  
distress  
warrant.

Imprisonment  
of defendant  
in default of  
sufficient  
distress.  
*Cf.* *ibid.*,  
ss. 99, 100  
*Cf.* 25 & 26  
Geo. V, c. 46,  
s. 5 (3) (Imp.)

(2) The Magistrate to whom any application is made for the issue of his warrant of commitment shall, before issuing his warrant, consider the report made under the *last preceding* section and make such further inquiry into the circumstances surrounding the default as he considers necessary, and the Magistrate shall also (in any case where the defendant has been placed under supervision under section *seven* of this Act) take such steps as may be practicable to obtain from the person appointed for the supervision of the defendant an oral or written report as to the conduct and means of the defendant, and shall consider any report so obtained. The Magistrate may thereafter, if he is of opinion that it is in the interests of justice so to do, either—

(a) Issue his warrant as provided in the *last preceding* subsection; or

(b) Issue his warrant in respect of a sum less than the amount due in respect of the conviction or order; or

(c) Direct that the issue of a warrant be postponed for such time and upon or subject to such conditions as he thinks fit; or

(d) Direct that no warrant be issued.

(3) The *last preceding* subsection shall not apply in the case of a defendant who is in prison or in any case where the person having the execution of the warrant of distress makes a return that the defendant could not be found.

(4) Where the Magistrate, under subsection *two* of this section, directs that no warrant be issued or issues his warrant for a sum less than the amount due in respect of the conviction or order, the amount due, or, as the case may be, the difference between that amount and the sum in respect of which the warrant is issued shall be deemed to be remitted and no further action shall be taken for the recovery thereof.

(5) In this section the expression “the amount due in respect of the conviction or order” means the sum adjudged or ordered to be paid together with the costs and charges of distress.

13. The period of imprisonment imposed under the principal Act or under any other Act in respect of the non-payment of any sum adjudged or ordered to be paid by a conviction or order or in respect of the default of sufficient distress to satisfy any such sum shall be such period as, in the opinion of the Justices or Magistrate fixing the period, will satisfy the justice of the case, not exceeding in any case the maximum period fixed by the following scale, that is to say:—
- 10 Where the amount of the sum adjudged or ordered to be paid by the conviction or order—
- |  |                              |
|--|------------------------------|
|  | The period shall not exceed— |
| Does not exceed <i>one</i> pound ..                                    | <i>Two</i> days:             |
| 15 Exceeds <i>one</i> pound but does not exceed <i>two</i> pounds ..   | <i>Four</i> days:            |
| Exceeds <i>two</i> pounds but does not exceed <i>five</i> pounds ..    | <i>Ten</i> days:             |
| 20 Exceeds <i>five</i> pounds but does not exceed <i>ten</i> pounds .. | <i>Twenty-one</i> days:      |
| Exceeds <i>ten</i> pounds but does not exceed <i>twenty</i> pounds ..  | <i>Six</i> weeks:            |
| Exceeds <i>twenty</i> pounds .. ..                                     | <i>Three</i> months.         |
14. Where any person who is imprisoned for non-payment of any sum adjudged or ordered to be paid by a conviction or order, or in respect of the default of sufficient distress to satisfy any such sum, pays to any person authorized or entitled to receive the same any amount in partial satisfaction of the total amount, including costs and charges, for which he is liable, the term of his imprisonment shall be reduced by a number of days bearing as nearly as possible the same proportion to the total number of days for which he has been committed as the amount so paid bears to the total amount, including costs and charges, for which he is liable, and the keeper of the prison in which he is imprisoned shall on the expiration of the term so reduced discharge that person unless he is in custody for some other matter.
15. Where an order of Justices is not for the payment of money but for the doing of some other act, and directs that in case of the defendant's neglect or refusal to do that act he shall be imprisoned, and the defendant neglects or refuses to do that act, any Justice may issue his warrant of commitment (No. 29).

Scale of imprisonment for non-payment of money.  
Cf. 1927, No. 37, s. 101

Remission of part of sentence of imprisonment for non-payment of money on partial payment.  
Cf. *ibid.*, s. 102

Defendant refusing to obey order may be imprisoned.  
Cf. *ibid.*, s. 116

A warrant of commitment under this section shall require that the defendant be imprisoned in some convenient prison therein named for such time as the Justices at the hearing may have ordered or as the Justice issuing the warrant thinks reasonable, not exceeding in either case the maximum period (if any) prescribed in that behalf by the Act on which the order is founded. 5

Warrant of commitment where punishment is imprisonment in first instance.

*Cf.* 1927, No. 37, s. 105

Power to impose cumulative terms of imprisonment.

*Cf.* *ibid.*, s. 106

**16.** Where Justices by a conviction do not adjudge that the defendant do pay a fine, but adjudge that he is imprisoned, any Justice may forthwith issue his warrant of commitment (No. 24). 10

**17.** (1) Where a defendant is summarily convicted of more offences than one by the same Justices, or where a defendant summarily convicted of an offence is undergoing punishment for some other offence, the Justices may, if they think fit, on the occasion of the last conviction, order that the sentences passed upon the defendant for his several offences shall take effect the one after the other. 15 20

(2) Where a warrant of commitment in respect of the non-payment of any sum adjudged or ordered to be paid by a conviction or order or in respect of the default of sufficient distress to satisfy any such sum is issued against a defendant who is undergoing imprisonment or is under sentence of imprisonment, the Magistrate or Justice issuing the warrant may, if he thinks fit and if the Justices at the hearing of the proceedings on which the warrant is issued have not ordered otherwise, order that the imprisonment ordered by the warrant shall commence at the expiration of the imprisonment previously imposed on the defendant. 25 30

(3) The making of an order under the provisions of this section shall be noted on the warrant of commitment issued against the defendant, and the warrant shall forthwith be delivered to the Gaoler of the prison therein named. 35

Alteration of warrant of commitment in respect of the prison named.

*Cf.* *ibid.*, s. 109

**18.** Where any warrant of commitment has been issued for the imprisonment of any person in a prison named in the warrant any Magistrate may, if it appears to him to be more convenient that that person be imprisoned in some other prison, endorse the 40



warrant accordingly, and the warrant shall thereupon have effect as if the name of the prison mentioned in the endorsement had been originally inserted in the warrant.

5     **19.** (1) The First Schedule to the principal Act is hereby amended by omitting the forms numbered (17), (18), (25), and (26). Forms.

10     (2) The Governor-General may from time to time, by Order in Council, make regulations prescribing forms for the purposes of this Act and prescribing forms which may be used instead of any of the forms set out in the First Schedule to the principal Act.

15     **20.** (1) The provisions of this Act are in substitution for sections ninety-three to one hundred and nine, sections one hundred and fifteen to one hundred and twenty, and section two hundred and fifty-seven of the principal Act, and those sections are hereby accordingly repealed. Repeals and savings.

20     (2) Section one hundred and eleven of the principal Act is hereby consequentially amended by omitting from subsection two the words "and to issue warrants of distress (No. 25) or commitment (No. 26) to compel obedience to any order to be made upon the hearing of such complaint".

25     (3) All orders, warrants, judgments, recognizances, and generally all acts of authority which originated under any of the enactments repealed by this Act shall enure for the purposes of this Act as fully and effectually as if they had originated under the corresponding provisions of this Act and accordingly shall where necessary be deemed to have so originated; and all matters and proceedings commenced under any of those enactments, and pending or in progress on the commencement of this Act, may be continued, completed, and enforced under this Act.

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