

the extension of facilities for paying by instalments, and other reforms with this end in view. The Committee's principal recommendations are dealt with hereunder :—

(a) *Imprisonment in Default of Payment of Fine without Inquiry as to Circumstances of the Default.*

The Committee laid it down as a general principle that no one should go to prison for non-payment under an adjudication of a Court of Summary Jurisdiction unless and until the mind of the Court has been specifically directed to the question of his imprisonment, and recommended that provision should be made for the appearance of the defaulter before the Court at the time when the decision as to his actual committal to prison is to be taken. The Committee was of the opinion that it is entirely wrong that a committal warrant should be issued against a person whom the Court has never seen and of whose circumstances it knows nothing. It was pointed out that it was the practice at many Courts for the term of imprisonment to be served in default of payment of fine, to be fixed at the time the fine is imposed, and that, as the Court knows that fines are paid in 97 per cent. of cases, and deals with the case on the assumption that the fine will be paid, the mind of the Court is not at that time directed to the likelihood of the defendant being imprisoned; and, further, that one of the factors which should be taken into account in fixing the term of imprisonment in default of payment of the fine—i.e., the circumstances of the default—cannot possibly be taken into account, because they will not be known until the default has occurred. It has been pointed out that whereas in the case of default in payment of fine for a comparatively venial offence imprisonment follows almost automatically, yet in more serious cases, such as theft, the first offender receives most careful consideration on the question of imprisonment, and wherever possible is given the benefit of probation.

Most of the recommendations of the Committee were given effect to by the Money Payments (Justices Procedure) Act, 1935, which provides that, with certain exceptions, the default shall not be fixed at the time the fine is imposed, and, further, that a warrant of commitment in default of a fine shall not be issued unless on an occasion subsequent to the conviction the Court has made inquiry as to the defendant's means in his presence. This involves the attendance of the defendant before the Court on a second occasion, either by summons or upon warrant, to explain his default. If he does not attend upon summons the issue of a warrant to bring him before the Court to explain his default becomes necessary.

In New Zealand, except in the case of drunkenness, it is not usual—in fact, with rare exceptions, it is not permissible—for the Court to fix the default at the time the fine is imposed, so that the defect in that respect previously existing in the English law does not exist here. Nevertheless, the objectionable feature mentioned above applies with a good deal of force here, because, when the default is subsequently fixed, it is not required to be fixed only after a consideration of the circumstances surrounding the default. In fact, once the fine is imposed, in some Courts where there is no resident Magistrate, the Magistrate has nothing further to do with the matter, the collection of the fine being the duty of the Clerk, who decides when the time has arrived to issue a warrant of committal, the warrant, of course, being signed by a Justice. The default is fixed in accordance with section 101 of the Justices of the Peace Act, which permits a fairly wide discretion; for instance, for a fine of 5s. the imprisonment may be fixed at any period up to seven days. In the absence of an application by the defaulter for time to pay, there is no opportunity for considering with care the question whether, having regard to all the circumstances of the default, the offender merits immediate imprisonment, or should be given longer time for payment, or of considering the quantum of imprisonment.

It is apparent that our law requires revision if it is to conform with the principles enunciated by the Committee. Some modification, however, of the new English procedure is necessary to meet our conditions. For instance, I do not think it would be practicable to require the second attendance of the defendant before the Court before a warrant of committal is issued. Such a procedure would prove extremely cumbersome, and would unduly hamper the proper administration of justice, especially in country districts where the sittings of Courts are infrequent. It is proposed to recommend certain amendments of the Justices of the Peace Act which, if given effect to, will, it is thought, prove satisfactory from a practical point of view and at the same time conform substantially with the principle laid down, “so that those who, having the money to pay, prefer imprisonment, will receive punitive terms and so discourage this form of unsocial conduct,” whilst those who have not the means to pay, or who can pay only by instalments, will receive that consideration which will reasonably ensure that they will not be imprisoned unnecessarily.

The proposals referred to include provision that a period of fourteen days' grace shall be allowed in every case where a fine is imposed, except where the Court otherwise specifically directs; a provision that the term of imprisonment in default of payment of fine shall be fixed in every case by a Magistrate personally; and that no warrant of committal in default of payment shall be issued until inquiry has been made into the circumstances surrounding the default, and unless the Magistrate is satisfied that no further time to pay is warranted.

It is suggested that fines for drunkenness be exempted from these provisions. Persons convicted of this class of offence are usually members of the “derelict” class, to whom imprisonment for a day or two would not be likely to have any degrading effect. In many such cases there is little likelihood that a fine will be paid. For a first and second conviction for drunkenness, however, the Court is bound to impose a fine, even where it appears the defendant has no means, the fine very often being imposed merely as an end to committal to prison for an appropriate term. In such cases imprisonment is not felt to be an inappropriate penalty, and the Court is not prepared to give the offender extended time or other facilities for the payment of the fine. If, on the other hand, the defendant has any ready money, it is in the possession of the police and immediate payment can be made.

Provision should also be made giving power to the Court to deprive a defendant of the provisions above in special cases, such, for instance, as where the defendant has numerous previous convictions and has been in prison before. In some cases the view of the Court is that the offender deserves imprisonment: that to allow him to pay a fine is an act of clemency; and that if he fails—for whatever reason—to pay the fine within a brief delay, he has no claim to consideration.