GOOD TIME STATUTE inapplicable to prisoners at State Farm pursuant to bastardy judgment and commitment.

STATE FARM, prisoners committed to, for failure to pay or replevy bastardy judgment, not entitled to diminution of imprisonment under good time statute.

May 8, 1941.

Mr. Floyd J. Hemmer, Supt.,
Indiana State Farm,
Greencastle, Indiana.

Dear Sir:

I have your inquiry as to whether or not Sec. 13-511, Burns’ Ind. St. Ann. 1933, authorizing the diminution of time from the sentence of prisoners confined in the Indiana State Farm, is applicable to a person there imprisoned pursuant to having been committed for failure to pay or replevy a judgment rendered against him in a bastardy proceeding. Such judgments and commitments are authorized by the following statute:

“Such court shall, on such verdict and judgment, make such order as may seem just for the securing such maintenance and education to such child, by the annual payment to such mother, or if she be dead or an improper person to receive the same, to such other person as the court may direct, of such sums of money as may be adjudged proper, and shall render judgment for the same specifying the terms of payment, and shall require of such defendant, if he be in custody, to replevy such judgment by good freehold surety, or in default thereof, shall commit such defendant to jail; or to the state penal farm; and should the defendant fail to replevy or pay said judgment, and in default thereof be committed to jail, or to the state penal farm, and upon proof thereof being made to the court, that the defendant has been imprisoned in the jail of the county or the state penal farm for a period of twelve months from the date of his imprisonment, and that he is unable to pay or replevy the same, he may be released from imprisonment by an order of the court made at the regular term of said court, which order of release shall be entered upon the records of said court.”
Prior to the amendment of 1935 this statute provided for imprisonment in the county jail only. In considering the statute, prior to the 1935 amendment, the Indiana Supreme Court said:

"This statute contemplates a motion or application to be made for the release of the defendant, and that the court shall have proof in support of such application, and if it shall affirmatively appear that the defendant has been imprisoned in the county jail for the period of one year, and is unable to pay or replevy the judgment, the court shall make an order discharging him *** The statute needs no interpretation; it means what its terms purport; that before he shall be entitled to his discharge it shall have been proven that he 'has been imprisoned in the jail of the county for a period of twelve months from the date of his imprisonment.'"

State ex rel. Kahn v. Woodward (1890), 123 Ind. 30, 32, 33.

The only change in the statute since the above statement was made by the Supreme Court is that of 1935 to the effect that the state penal farm, as well as the county jail, may be a place of imprisonment. This does not alter the requirement that the defendant is entitled to his release only after an order of court is made pursuant to a showing that the defendant has been imprisoned for one year and is unable to pay or replevy the judgment.

Sec. 13-511 of Burns, etc., supra, fixes a schedule by which "every prisoner who is now or hereafter may be confined in the Indiana State Farm and who, while an inmate of said institution, shall have no infractions of the rules and regulations of the institution nor infractions of laws of the State of Indiana or laws of the United States recorded against him, and who performs in a faithful manner the duties assigned to him while a prisoner, shall be entitled to a diminution of time from his sentence." The schedule is based upon the number of months of sentence. This provision contemplates rewarding for good behavior by effecting a reduction in the
penalty prescribed by the Court at the time a sentence was pronounced upon a defendant for an unlawful act theretofore committed. The imprisonment imposed pursuant to Sec. 3-615 is for the continued failure to pay or replevy the judgment rendered as provided in that section. Even at the end of a year's imprisonment, the Court would be justified in refusing to order a defendant's release if it should be shown that the defendant was able to pay or replevy the judgment. The imprisonment in such cases is for a continuing offense as distinguished from a sentence for a completed offense. Sec. 13-511, supra, by its terms is applicable to prisoners under sentence for completed offenses, but not to prisoners whose imprisonment is pursuant to Sec. 3-615, supra.

INDIANA HORTICULTURAL SOCIETY: Retail sale of fruit by grower.
FRUIT: Retail sale by grower.

Mr. Monroe McCown,
Secretary-Treasurer,
Indiana Horticultural Society,
Lafayette, Indiana.

Dear Sir:

This is in answer to your request of May 5, 1941, for an opinion construing Sec. 4 of Chapter 216 of the Acts of 1941, which fixes certain requirements in the sale of apples, peaches, and strawberries. Section 4 is as follows:

"The provisions of this act shall not apply to retail sales of apples, peaches, or strawberries sold or offered for sale by the original grower on his own premises."

The questions you ask have to do with an interpretation of the language "on his own premises," in the above section. Your questions are:

"1. Can any place other than the farm upon which the grower produced the apples, peaches, or strawberries be considered to be 'his own premises' under this act (S. B. 217) and thus exempt from the provisions of said act?"