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?"
"2. Can farm or farms other than the one upon which the fruit is produced but which is owned or leased by the grower and operated by him or by some other party be considered 'his own premises' under this act (S. B. 217) and thus retail sales thereon exempt from its provisions?

"3. Can a roadside stand built upon a site removed from the farm where fruit is produced, said site either owned or leased by the original grower but operated by him for the purpose of making retail sales, be considered to be 'his own premises' under this act and thus retail sales made therein to be exempt from the provisions of this act (S. B. 217) ?

"4. Can a salesroom situated at some distance from the farm upon which the fruit is produced, said salesroom owned or leased and operated by the original grower for the purpose of selling his own fruit at retail, be considered to be 'his own premises' under this act and consequently retail sales of the three fruits therein to be not subject to the provisions of S. B. 217?

"5. Can a 'stall' in a public market, said stall leased by the grower for any given period of time for the purpose of selling at retail apples, peaches, or strawberries grown by him, be considered to be 'his own premises' under this act and thus retail sales of apples, peaches, strawberries made therein to be exempt from the provisions of this act (S. B. 217) ?"

In my opinion, all the questions should be answered in the negative, with some explanations. The section we are considering is an exception to the rule established by the statute and should be strictly construed, but, also, reasonably construed so as to reflect the intention of the Legislature. The evident purpose of the Legislature was the protection of those who buy and consume the fruit; but the lawmakers thought that, as to the retail sale of strawberries, peaches and apples by the growers on their own farms or lands, that the protection provided in the statute was unnecessary, and would perhaps put some unnecessary burden on the small grower who might not understand the law, or who would not be able to comply with it.
Each case of a possible law violation will have to be settled when it arises—as to what is meant by “on his own premises.” I believe if a grower had some land on a country by-road, where his fruit was grown; but had another farm on a main highway, he would be within the intent of the statute if he sold his fruit out on the main highway. This illustrates what I mean by a reasonable interpretation.

INSURANCE COMMISSIONER: Right of Commission to limit time in which company guaranty fund must be deposited in order for company to complete organization. Liability of Commissioner if he accepts guaranty fund with knowledge that stock has been sold prior thereto.

May 19, 1941.

Honorable Frank J. Viehmann,
Insurance Commissioner of Indiana,
240 State House,
Indianapolis Indiana.

My dear Mr. Viehmann:

I have before me your request for an official opinion presenting the following inquiry:

“In October, 1940, a group of individuals, the majority of whom were residents of the State of Indiana and citizens of the United States, presented to the Insurance Department proposed Articles of Incorporation of an insurance company pursuant to the provisions of Section 61, et seq. of the Indiana Insurance Code (Chapter 162 of the Acts of 1935). The proposed Articles of Incorporation were approved by the Department of Insurance of Indiana, and were submitted to the Attorney General, who examined such Articles. The Attorney General then certified that the Articles conformed to the provisions of the Insurance Code and were not inconsistent with the Constitutions of the State of Indiana or of the United States. Subsequently the proposed Articles of Incorporation were presented to the Secretary of State for the State of Indiana, who endorsed his approval as required by Section 70 of the