answer is that those other members had not done so, and if they had, they could have been dealt with and could have been removed from the House, and in law there could not be a necessity to bring the plaintiff back into the chamber in order to prevent other possible disorder on the part of other members from arising. The facts as alleged therefore do not, in my opinion, amount to any possible justification.

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Appeal dismissed with costs.

Solicitor, for the appellants, *J. V. Tillett*, Crown Solicitor for New South Wales.

Solicitors, for the respondent, *Minter, Simpson & Co.*

B. L.

[HIGH COURT OF AUSTRAILA.]

BEDINGFELD . . . . . APPELLANT;
INFORMANT,

AND

KEOGH . . . . . RESPONDENT.
DEFENDANT,

ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES.

Health—Pure Food—Authority to Prosecute—"Enforcing" the provisions of the Act—Pure Food Act 1908 (*N.S.W.*) (*No.* 31 *of* 1908) *secs.* 9, 40—*Fines and Penalties Act* 1901 (*N.S.W.*) (*No.* 16 *of* 1901) *sec.* 4—*Public Health Act* (1902) (*N.S.W.*) (*No.* 30 *of* 1902) *sec.* 108.

A prosecution for an offence against the provisions of the *Pure Food Act* 1908 may be instituted by any person under the general authority given

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by sec. 4 of the *Fines and Penalties Act* 1901, the right to prosecute not having been expressly given by sec. 9 of the *Pure Food Act* 1908 to any officer or person by name or designation.

R. v. *Stewart*, (1896) 1 Q.B. 300, followed.

Decision of the Supreme Court: 28 W.N. (N.S.W.) 171 reversed.

APPEAL from the Supreme Court of New South Wales.

On the hearing at the Parramatta Police Court of an information by Thomas William Bedingfeld, an Inspector of Police, the present appellant, charging Matthew Keogh, the present respondent, with selling an article of food which was adulterated, contrary to the provisions of the *Pure Food Act* 1908, objection was taken that a member of the police force had no authority to enforce the provisions of the Act by laying the information. The magistrate held that the objection was a good one and dismissed the information. On the request of the informant he stated a case by way of appeal for the opinion of the Supreme Court, asking whether his determination was erroneous in point of law.

The appeal was heard by *Ferguson* A.-J., who affirmed the decision of the magistrate and dismissed the appeal: *Bedingfield* v. *Keogh* (1).

From this decision the informant now by special leave appealed to the High Court.

Rolin K.C., with him *Collins*, for the appellant. At common law where a penalty is imposed by Statute, anyone may take proceedings to recover it unless the Statute expressly or by necessary implication takes away that right: *Giebler* v. *Manning* (2); *Anderson* v. *Hamlin* (3); *R.* v. *Stewart* (4). Then by sec. 4 of the *Fines and Penalties Act* 1901 the right to take those proceedings is conferred on any person unless by the Act imposing the penalty the right is expressly given to an officer or person by name or designation. Sec. 9 of the *Pure Food Act* 1908 does so expressly give the right to take proceedings to recover penalties under the Act upon any particular person. The word "enforcing" in that sec. does

(1) 28 W.N. (N.S.W.), 171
(2) (1906) 1 K.B., 709.
(3) 25 Q.B.D., 221.
(4) (1896) 1 Q.B., 300.

not include taking those proceedings. Its position in the Act, under the heading "Administration" and not under Part IV., which deals with legal procedure, supports that view. Sec. 40 provides that penalties may be "enforced" in a summary way. By sec. 108 of the *Public Health Act* 1902, with which Act the *Pure Food Act* 1908 is to be read as one, on a prosecution instituted by a member of the police force no proof is necessary of his authority to prosecute. The word "enforcing" in sec. 9 refers to such matters as requiring local authorities to take proceedings for carrying out the Act.

Bignold, (*Boyce* with him), for the respondent. The word "enforcing" in sec. 9 of the *Pure Food Act* 1908 includes instituting proceedings to recover penalties. Under sec. 17 of the *Public Health Act* 1902 the administration only of that Act was given to the local authorities, and it was intended by sec. 9 of the *Pure Food Act* to give more than the administration of the Act to the Board of Health. They also referred to the *Local Government Act* 1906, sec. 191; *R.* v. *Hicks* (1); *R.* v. *Panton, ex parte Schuh* (2); *Pinkerton* v. *Heaney* (3).

Rolin K.C., in reply referred to *Caldwell* v. *Keys* (4); *Bennett* v. *Bell* (5).

GRIFFITH C.J. The point for decision in this case is whether a prosecution for a breach of the provisions of the *Pure Food Act* 1908 can be instituted by anyone but an officer of the Board of Health. Sec. 9 of that Act provides that:—"The administration and the enforcing of the provisions of this Act shall primarily be the duty of the Board of Health, but may, by the direction of the Governor, be left in any case to the local authority, who shall, however, be subject to the provisions of sec. 24 of the *Public Health Act* 1902." It is not necessary to refer to sec. 24 except to say that it authorizes the Board of Health to require a local authority to exercise a power which that authority has not duly exercised.

(1) 4 El. & Bl., 633.
(2) 14 V.L.R., 529.
(3) 15 V.L.R., 392.
(4) 23 W.N. (N.S.W.) 3.
(5) 23 W.N. (N.S.W.) 1.

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In this case the information against the respondent was for a breach of sec. 10 of the *Pure Food Act* 1908, that is, selling an article of food which was adulterated, and was laid by an Inspector of Police. The objection taken is that he could not lay it because it did not appear that he was an officer of the Board of Health. It is not suggested that in this instance the administration of the Act was left by the Governor to a local authority, so that nothing turns upon those words.

The general rule of law was stated by *Kay* L.J., in *R.* v. *Stewart* (1), as follows:—"*Primâ facie* there is no doubt that anybody may take proceedings to recover a penalty. That is an old rule and is well established. The Act now under consideration in terms provides that penalties shall be imposed for certain acts, and that these penalties shall be regarded as though they were penalties incurred under the Summary Jurisdiction Acts. In order to prevent the application of the general rule, it must be shown that the Act in plain terms prevents anyone, except certain specified persons, from prosecuting for offences under the Act. I can find no such provision."

Apart from that general rule of law, in New South Wales the *Fines and Penalties Act* 1901, by sec. 4 provides that: "Any fine, penalty or forfeiture imposed or authorized to be imposed by any Act may be sued and proceeded for by any person whomsoever unless by the Act imposing the same such right to sue or proceed is expressly given to any officer or person by name or designation." What is necessary to be established, therefore, is that the *Pure Food Act* expressly gives some particular person the right to sue. The only word relied on is the word "enforcing" in the phrase "the enforcing of the provisions of this Act" in sec. 9. That argument was addressed to the Court which decided the case of *R.* v. *Stewart* (2). That Court was a Divisional Court constituted of two members of the Court of Appeal, a course which is sometimes adopted when it is thought that a previous decision is likely to lead to inconvenient consequences. *Lindley* L.J., after quoting the section (*Diseases of Animals Act* 1894 (57 and 58 Vict. c. 57) sec. 2), which was as follows:—"The local authorities in this Act described shall execute and enforce

(1) (1896) 1 Q.B., 300, at p. 303. (2) (1896) 1 Q.B., 300.

this Act and every order of the Board of Agriculture so far as the same are to be executed or enforced by local authorities," said (1):—"In terms that section does not apply to preferring informations at all. The local authority are by it constituted the persons whose duty it is to see that the Act is complied with. I do not think that either that section or the words of the 30th clause of the Order of 1895, 'The provisions of this Order, except where it is otherwise provided, shall be executed and enforced by the local authority,' exclude the ordinary right of any person to prefer an information." It cannot be contended, in face of the Statute and of that decision on a very similar Act, that this Act expressly gives the right to sue for penalties to any designated person. So far from that, looking at the Act, it is manifest that certainly a great number of persons may sue. I refer to one or two sections, but it is a work of supererogation; it is impossible to escape from sec. 4 of the *Fines and Penalties Act*. For instance, sec. 22 authorizes any officer—the term "officer" includes various persons, amongst others any superintendent, inspector, sub-inspector, or sergeant of police—to enter and inspect any place where food is kept or used for sale etc., to inspect any article used, or which he has reasonable ground for believing is intended to be used, as a food, and to seize any article which is, or appears to him to be, dangerous or injurious to health, or unwholesome, or unfit for use, and authorizes any justice to grant a summons calling upon the owner to show cause why an article seized should not be forfeited and destroyed. Who is the person, if the Act designates nobody, to lay the information in such a case? It would be the officer who seizes the goods, and the Act does not imply that he is not the person to lay the information.

Again, sec. 23 authorizes an officer to obtain samples of food from the person selling, manufacturing or preparing it for sale, and any person in the community may require any officer to purchase a sample of any food and submit the same for analysis. Then sec. 24 provides that the person purchasing, or the officer taking, any food with the intention of submitting it to analysis, shall do certain things, and, if it turns out that the law has been broken,

(1) (1896) 1 Q.B., 300, at p. 302.

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somebody can institute a prosecution. Why not the person who has ascertained the fact? I can see no reason. So that, so far from there being anything in the Act to suggest that a designated person alone is to sue for penalties, the Act suggests the opposite.

Reference was made by Mr. *Rolin* to sec. 108 of the *Public Health Act* 1902, with which the *Pure Food Act* is to be read. That section provides that: "In any legal proceeding or prosecution under the provisions of this Act instituted by" amongst others a member of the police force "no proof shall be required . . . of the authority of such . . . member of the police force to prosecute." The contention is that these Acts taken together forbid a member of the police force to prosecute except within a police district which is not a municipality. That contention is in the very teeth of the plainly expressed intention of the legislature. I am unable to see any reason for holding that the operation of sec. 4 of the *Fines and Penalties Act* is excluded, and I therefore think that the appeal must be allowed.

ISAACS J. The New South Wales legislature has by sec. 4 of the *Fines and Penalties Act* 1901 enacted that [His Honour read the section and continued]:—That is the difficulty which stands in the way of Mr. *Bignold*. The way he endeavours to satisfy that requirement is by reference to sec. 9 of the *Pure Food Act*. The word he rests upon is the word "enforcing," and that section does say that the enforcing of the provisions of the Act shall be primarily the duty of the Board of Health and secondly of the local authority if so directed by the Governor. My answer to that is that I do not think the word "enforcing" there has reference to such a position as is mentioned in sec. 4 of the *Fines and Penalties Act*. My reasons are these:—The *Pure Food Act* is an amendment of the *Public Health Act* 1902 with which, by sec. 1 of the *Pure Food Act*, the latter Act is to be construed as one. Then sec. 12 of the *Interpretation Act* 1897 provides that:—"Every Act amending an Act shall be construed with the amended Act and as part thereof, unless the contrary intention appears in the amending Act." There is no contrary intention appearing in the amending Act. Sec. 108 of the *Public Health Act*, to which the Chief Justice has referred, is very

strong to show that it never was intended to exclude police officers from prosecuting for offences against the Act. I think that the meaning of the word "enforcing" may be gathered from a consideration of the *Pure Food Act*. Sec. 9 is under the heading "Administration of the Act." That heading is to have some meaning given to it, but not of course so as to over-ride any express provisions of the section. The administration of the Act as pure administration would fall short of carrying out its objects. An advisory committee is constituted by sec. 6 of very special persons —experts in various branches of science, trade, commerce and manufacture—and sec. 5 provides that for the purposes of the Act an article of food is adulterated when (*inter alia*) "it contains . . . any substance in any quantity or in any proportion which diminishes in any manner its food value or nutritive properties as compared with such article in a pure or normal state and in an undeteriorated or sound condition." That, as Mr. *Bignold* rightly said, is a matter involving a great deal of scientific and technical knowledge. Apart from the word "enforcing" the Act does not provide for it—"administration" would not be sufficient. When a person is prosecuted, as in this case, for selling an article of food which is "adulterated or falsely described"—which are the very words in sec. 5—it may be necessary to get a definite standard to show whether the adulteration or false description is within the words of sec. 5. Now if we turn to sec. 54 we find that the Board of Health, on the recommendation of the advisory committee "shall make regulations which may vary in their application according to time and place or the destination of the article referred to in the regulation—prescribing standards for the composition, strength, purity or quality of any food or drug, or for the nature or proportion of any substance which may be mixed with or used in the preparation or preservation thereof, or prohibiting the addition of any substance to any article of food," &c.—many things which lay down practical rules in order to determine what is adulteration and what is not. All that would fairly and properly come under the word "enforcing." You can administer an Act without enforcing it, and enforcing this Act means putting it into practical operative force. That is left primarily to the Board of Health, or the local

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authority if so directed by the Board under sec 24 of the *Public Health Act*, a section which has reference to the exercise of powers and provides for the failure by a local authority to exercise a power, the non-exercise of which is in the opinion of the Board likely to endanger the public health.

So that ample meaning can be given to the word "enforcing" without involving the nomination of the Board, or a local authority, as the sole prosecuting authority to lay an information. When that is apprehended, then the rest of the Act is in harmony with it.

The learned Chief Justice pointed out sections which expressly provide for an officer entering a place and taking samples, &c., which would undoubtedly be part of the enforcement of the Act in the sense of taking steps to compel obedience to its mandates. This would not be possible if Mr. *Bignold's* contention were correct. Reading these sections with the definition of "officer," I have no hesitation in thinking that there has not been given any such express right to sue or proceed for penalties as is referred to in sec. 4 of the *Fines and Penalties Act*, that is a right which is intended to exclude the prosecution of an offence by a police officer, and, therefore, I think the objection should not be allowed to prevail.

Appeal allowed.

Solicitor, for the appellant, *J. V. Tillett*, Crown Solicitor for New South Wales.

Solicitor, for the respondent, *H. E. McIntosh.*

B. L.