

While submitting that there is such jurisdiction, Mr Palmer very properly has drawn my attention to certain matters which may give rise to doubt.

The sections of the Local Government Act relating to fire prevention and safety in factories - 636B to 636P - were introduced into the Act in 1981 and came into force in 1982. Section 636L sets out what may constitute offences on the part of occupiers of factories and Section 636M provides penalties for these offences.

In the present case no prosecution has been launched, but Mr Palmer cites A.G. v. Chaudry [1971] 3 All ER 938 for the proposition (contained in the headnote) that, notwithstanding that an Act provides a remedy in the inferior court for breach of its provisions, the High Court has power to enforce obedience to the law as enacted by way of injunction wherever it is just and convenient to do so. As the name indicates, that was a relator action, the Attorney General suing on the relation of the Greater London Council and the question arises whether it is competent for the Christchurch City Council in these proceedings to sue in its own name or whether this also should be a relator action.

In the Local Government Act, there is an express provision in Section 698 permitting a District Court to grant an injunction:-

"(3) Where a person commits a continuing breach of any provision of this Act which is an offence to which this section applies, then, notwithstanding anything in any other Act, a [District Court] may, on application by the council, grant an injunction restraining the further continuance of the breach by that person."

I was at first disposed to think that, if power were granted to a council to apply to the District Court, then possibly an application could be entertained in this Court. On reading Subsection (1), however, it becomes apparent that difficulty

arises by reason of the words which I have underlined in Subsection (3); "which is an offence to which this section applies". Subsection (1) states:-

"Every person who commits an offence against this Act for which no penalty is provided elsewhere than in this section is liable to a fine"

Subsection (3) is expressed to be limited to such offences, whereas, as already mentioned, Section 636M provides penalties for offences under 636L, so that the practical effect is to make any breach of the provisions of the sections relating to fire prevention and safety in factories an offence and one for which a penalty is provided. I cannot think, therefore, that Section 698(3) could have been invoked in the present situation. Possibly the intention was that 698(3) would apply in all situations but, if that was the intention, the Act has failed to achieve the desired result.

It seems to be a most unfortunate situation that a local authority should be regarded, so far as its own district is concerned, in the same light as a private individual; that it should not be able to take, in its own right and in its own name, proceedings which may be of great importance in the due administration of the Local Government Act, particularly in a case such as the present one where it appears that there is a real danger of fire which ought to be eliminated. Mr Palmer was unable to suggest anything which would empower the Council to do so, however. In the circumstances, I feel compelled to refuse to make the order.



Solicitors:

Weston, Ward & Lascelles, Christchurch, for Plaintiff
No Appearance for Defendant.