LAW REPORTS.

HIGH COURT OF JUSTICE.

QUEEN'S BENCH DIVISION.

BEFORE DARLING AND CHANNELL, JJ.

*December 18th, 1899.*WELSH v. MAYOR, *etc.*, OF WEST HAM.

This was an appeal by case stated from a conviction by the deputy-stipendiary magistrate of West Ham. An information was laid by the respondents against the appellants for that, having been convicted on November 30th, 1898, of an offence committed on September 3rd, 1898, against one of the bye-laws of the borough relating to buildings, they did continue such offence for eighty-five days after written notice, contrary to Section 158 of the Public Health Act, 1875. The bye-law was one providing for a sufficiency of air space about buildings to secure a free circulation of air. The appellants were builders, and in 1898 they rebuilt for the Commercial Brewery Company (Limited) the Dewdrop Inn, Arkwright Street, in the borough of West Ham. The conviction on November 30th, 1898, was admitted, but it was stated that after that date the appellants had not been in possession of the premises, and had no right, power, or authority to go upon them. The premises remained in the same condition as on September 3rd, 1898, and as on the date of the conviction. The notice given by the respondents, who were the urban authority, was served on the appellants on January 20th, 1899. The magistrate held that the existing of the building in the condition above stated was a continuing offence, and convicted the appellants. Section 158 of the Public Health Act, 1875, after providing that an urban authority may, after notice, pull down any building not erected in accordance with their bye-laws, enacts that: "Where an urban authority may under this section pull down or remove any work begun or executed in contravention of any bye-law, or where the beginning or execution of the work is an offence in respect whereof the offender is liable in respect of any bye-law to a penalty, the existence of the work during its continuance in such a form and state as to be in contravention of the bye-law shall be deemed to be a continuing offence, but a penalty shall not be incurred in respect thereof after the expiration of one year from the day when the offence was committed or the bye-law was broken." The appellants' contention was that they could not be convicted of a continuing offence inasmuch as they were not owners of the premises and could not comply with the respondents' notice without committing a trespass" (*Marshall v. Smith*, L.R., 8 C.P., 416; *Rumball v. Schmidt*, 8 Q.B.D., 603; *Reay v. Mayor, etc., of Gateshead*, 55 L.T., 92, and *Smith v. Legg*, 1893, 1 Q.B., 398, were cited.

Boydell Houghton for the appellants; and *Gwynne James (Asquith, Q.C., with him)* for the respondents.

MR. JUSTICE DARLING said that if the building was put up in contravention of the Act the local authority might have ordered it to be pulled down. The statute went on to say that if the building remained in that condition there was a continuing offence. The question was, Who

committed the continuing offence? The builders, the appellants in this case, had done wrong in the first instance, and had been convicted for it; but before the notice in respect of which these proceedings were taken was served they had gone away, and had nothing more to do with the building. The local authority had it in their own hands to put an end to the offence either by pulling the building down or by proceeding against the person or persons who really continued the offence. The statute did not say that the person who first committed the offence was responsible for its continuance. Such a person was responsible for his own misfeasance; but it did not follow that another person might not be responsible for continuing the offence. That person need not be the original builder.

Mr. JUSTICE CHANNELL said that he was of the same opinion. The latter part of Section 158 was introduced to meet the case of *Marshall v. Smith*, in which it was held that suffering a wall built in contravention of a bye-law to remain unaltered was not a "continuing offence." As the offence was building the wall, not pulling it down was not a continuance of the offence. The question was, Who is the person guilty of the continuing offence in this case? The Act might have said that the original builder was the person guilty. The Court were asked to assume that the Act meant this because the section limited the penalties to one year. His Lordship, however, thought that the reasonable meaning of the section was that the person who was liable for the continuing offence was the person who actually continued it. If the local authority could not find out who that person was so much the worse for them. The Act, at all events, provided (in Section 306) machinery for discovering the owner. There was nothing in the Act which obliged their Lordships to hold that there was here a continuing offence by the person or persons who originally erected the building. In *Reay v. Mayor, etc., of Gateshead* Mr. Justice Hawkins was reported to have used language which justified the decision of the learned magistrate. The words attributed to him were, "If the section had been passed before *Marshall v. Smith* there would have been no doubt at all that the penalties there would have been properly imposed." But having regard to the actual decision in *Marshall v. Smith* this language was inaccurate and might have been incorrectly reported.

Appeal allowed.

BEFORE GRANTHAM AND CHANNELL, JJ.

Thursday, January 11th, 1900.

THE QUEEN *v.* MEAD (METROPOLITAN POLICE MAGISTRATE).

In this case, heard before a Divisional Court, cause was shown against a rule calling upon the magistrate to state a case. On July 17th last Dr. Thomas, Medical Officer of Health for Limehouse, seized 117 tubs of strawberries which he found in a van proceeding along Devonport Street, and applied to the magistrate for an order under Section 47 of the Public Health (London) Act, 1891, condemning them on the ground that they were unfit for the food of man. The magistrate refused to make the order upon the ground that there was no evidence that they were intended for the food of man. The information laid by Dr. Thomas, Mr. Sextus Van Os, the consignee of the strawberries, and Charles Willock, the carman, stated that the strawberries were unsound, and that they were part of a consignment shipped by Mr. Van Namen from