

1907.
June 5.

Present: Mr. Justice Grenier.

SENANAYAKA v. SERAMALIAR.

M. C., Kandy, 14,273.

Municipal Council—Delegation of authority by Chairman to Secretary to sanction prosecution—Validity—Ordinance No. 7 of 1887, ss. 290 and 306.

The Secretary of a Municipal Council may sanction prosecutions for breaches of by-laws made under the Municipal Councils Ordinance, 1887 (Ordinance No. 7 of 1887), if so authorized by the Chairman under section 290 of the Municipal Councils Ordinance, 1887 (No. 7 of 1887).

THE following complaint was filed against the accused:—

“ That the accused did, on or about the 12th day of March, 1907, at Kandy, within the jurisdiction of this Court, occupy ground beyond the limits of space No. 9 rented by him by leaving coconuts and vegetables there, in breach of clause 72, chapter VI., of the by-laws of the Municipal Council of Kandy, and thereby committed an offence punishable under section No. 306 of the said by-laws.

“ D. P. SENANAYAKA,
“ Complainant.

“ I authorize this prosecution.

“ JAS. JAYATILEKE,
“ Secretary, Municipal Council of Kandy,
“ for Chairman.”

Objection was taken that the plaint was bad as it was signed by the Secretary and not by the Chairman. The Magistrate (T. B. Russell, Esq.), over-ruled the objection on the authority of section 290 of Ordinance No. 7 of 1887, and convicted the accused.

The accused appealed.

G. Koch, for appellant.—The prosecution is bad for want of proper sanction. Section 306 of the by-laws provides that no complaint shall be preferred in any Court for breach of any by-law except with the previous sanction of the Chairman. This prosecution has been sanctioned by the Secretary and not the Chairman. The Chairman has no power to delegate to any other person the duty of sanctioning prosecutions laid on him by section 306 of the by-laws. The maxim *delegata potestas non potest delegari* applies. In *Hobbs v. The London County Council* (1) it was held that “ the question whether a specific legal duty may be performed by means of an agent or deputy depends on the nature of the duty. A duty which is merely ministerial may be delegated, but not a duty the performance of which involves discretion or skill.”

(1) (1897) 75 *Law Times*, 688; *Encyclopædia of the Laws of England*, vol. X. v. 339.

The duty of sanctioning prosecutions is of the latter class, as it involves the exercise of discretion, and is not merely a ministerial act of signing. Section 290 of the Municipal Ordinance, No. 7 of 1887, does not authorize the delegation of any but ministerial acts.

Assuming, for the sake of argument, that the Chairman can delegate the authority to Mr. Jayatileke filed in this case does not delegate the duty of sanctioning prosecutions to him, it only contemplates the signing of papers. There is no need to consider it bad grammar, as the Police Magistrate does, because it can be intelligently read as it is, and it is not to be supposed that an intelligent and experienced gentleman like Mr. Lewis, the Chairman, would have signed a document open to the charge of being bad grammar. (GRENIER J.—Why do you appeal? The punishment is nominal, only a fine of Rs. 5.) This offence is merely statutory, not a *malum in se*, and the appellant is entitled to demand that the law be strictly complied with before he can be punished for a statutory offence.

Bawa, for respondent.—I do not grant that the Chairman has not sanctioned this prosecution. He may have sanctioned it, and directed the Secretary to sign the plaint. Section 290 of Ordinance No. 7 of 1887 clearly gives the Chairman the right of delegating all duties, acts, &c., and this is clearly an act. The authority produced is bad grammar; it follows the wording of section 290, and includes the duty of sanctioning prosecutions.

Koch, in reply.—The authority is dated 1st September, 1906. The by-laws were proclaimed in January, 1907, so that the Chairman, in delegating his duties in September, 1906, could not have contemplated the duty of sanctioning prosecutions imposed on him by section 306 of the by-laws.

Cur. adv. vult.

5th June, 1907. GRENIER A.J.—

The appellant in this case was convicted of an offence under section 72 of the Municipal by-laws of Kandy, published in the *Government Gazette* of 11th January, 1907, No. 6,165, and sentenced to pay a fine of Rs. 5. The appellant is a stall-keeper, and his offence was that he occupied ground beyond the limits of space rented by him by leaving coconuts and vegetables thereon. There was no defence on the merits, but the appeal has been taken on a point of law. It was contended for the appellant that the Chairman of the Municipal Council had not sanctioned this prosecution as required by section 306 of the by-laws, and that section 290 of Ordinance No. 7 of 1887 contains no provision for the Chairman delegating the power conferred on him by section 306 of the by-laws to a third party. It was also argued that, assuming the Chairman had that power, the authority granted by him to Mr. Jayatileke, the Secretary of the Municipal Council, was defective, and did not give the latter the right

1907.
 June 5.
 GRENIER
 A.J.

to act on his behalf to sanction prosecutions when such sanction was necessary. In my opinion the Magistrate has taken a correct view of the law. The authority given by the Chairman in writing to the Secretary is, as the Magistrate remarks, "bad grammar," but it substantially embodies the provisions of section 290 of the Ordinance, which gives the Chairman the power to authorize any municipal officer to do any of the acts which he himself had the power to do. It is not to be expected that the Chairman would in view of his other official duties, be able to attend to all the work connected with the institution of ordinary prosecutions for breaches of by-laws which are reported by municipal inspectors from time to time; and section 290 was apparently expressly enacted vesting in the Chairman the right to delegate his authority to sanction prosecutions to such municipal officers as he considered were proper persons to whom the authority could be given. The municipal officer to whom the Chairman has given his authority under section 290 is the Secretary of the Council, and I find endorsed on the plaint the words, "I authorize this prosecution, Jas. Jayatileke, Secretary, Municipal Council of Kandy, for Chairman." It is manifest that the Secretary in authorizing the prosecution did so on behalf of the Chairman, and that the authority given by the Chairman dated the 1st September, 1906, fully covered the act of the Secretary. The authority itself, with the verbal amendments I have made, runs as follows:—

"Mr. James R. Jayatileke, Secretary of the Municipal Council of Kandy, is hereby empowered to sign receipts, letters, certain licences, and permits, and to endorse cheques received or issued on account of the Municipal Council, as well as do all acts and give all notices which the Chairman of the Municipal Council is empowered to do or give under section 290 of Ordinance No. 7 of 1887 or any other Ordinance. The authority to have effect from 1st September, 1906. The Municipal Office, Kandy, 1st September, 1906. J. P. LEWIS, Chairman, Municipal Council." There can be no question that the sanctioning of prosecutions under section 306 of the by-laws was one of the acts which the Chairman was empowered to do, and section 290 of Ordinance No. 7 of 1887 authorized him in plain language to delegate his authority to any municipal officer. It is not to be supposed that the Chairman would delegate his authority to sanction prosecutions without exercising his discretion in regard to the proper officer who should be so authorized, and in this particular instance I find that the authority has been given to the Secretary, who is a responsible officer of the Council, and whose authority on the face of it shows that the discretion of the Chairman has been properly exercised.

For the reasons I have given, I would dismiss this appeal.

Appeal dismissed.