[HIGH COURT OF AUSTRALIA.]

CULLIS . . . . . APPELLANT;
DEFENDANT,

AND

AHERN . . . . . RESPONDENT.
INFORMANT,

ON APPEAL FROM THE SUPREME COURT OF VICTORIA.

H. C. OF A. 1914.

MELBOURNE, *Oct.* 19.

Griffith C.J., Isaacs and Powers JJ.

Local Government—By-law—Validity—Inconsistency with Statute—Motor cycle—Rear light—Melbourne Corporation Act 1842 (*N.S.W.*) (6 *Vict. No.* 7), *sec.* 91*—*Motor Car Act* 1909 (*No.* 2237) (*Vict.*), *secs.* 2, 12, 15.*

The Council of the City of Melbourne purporting to act under sec. 91 of the Act 6 Vict. No. 7 passed a by-law requiring all vehicles to carry a lighted rear lamp between sunset and sunrise.

* By sec. 91 of the Act 6 Vict. No. 7 it is enacted that it shall be lawful for the Council of the Corporation of Melbourne to make "such by-laws and regulations as to them shall seem meet . . . for the good rule and government of the said town; . . . . and for the regulation and government of carters porters and drivers; . . . Provided . . . that no by-law to be passed by the said council shall be repugnant to this Act or to the general spirit and intendment of the laws in force within the colony."

The *Motor Car Act* 1909, by sec. 2, defines the term "motor car" as including "motor cycle." Sec. 12 provides that "(1) The person in charge of a motor car (not being a motor cycle) travelling or being driven after sunset and before sunrise shall unless otherwise prescribed—(*a*) Carry attached thereto at least one lighted lamp so constructed and placed as to exhibit a white light or lights visible within a reasonable distance in the direction towards which the motor car is travelling . . . ; and also (*b*) Carry a bright illuminating rear lamp in a prescribed position so that it shall illuminate to the utmost without overshadowing or hiding the identifying number of the car. (2) No person shall between sunset and sunrise drive ride or propel a motor cycle unless there is attached thereto a lighted lamp showing a bright white light visible in the direction towards which such motor cycle is being or is about to be driven or ridden sufficiently far to adequately signal the approach and position of such motor cycle and illuminate sufficiently the identifying number." Sec. 15 (5) provides that "In any by-law made by a council under any Act any provision which is inconsistent with this Act or any regulation hereunder shall whether made previously or subsequently to this Act or such regulation be deemed to be of no force or effect whatever."

Held, that the by-law was within the powers conferred by sec. 91 ; that a motor cycle was a " vehicle " within the meaning of the by-law ; and that the by-law, so far as it applied to motor cycles, was not inconsistent with or repugnant to sec. 12 of the *Motor Car Act* 1909, and was valid.

Decision of the Supreme Court of Victoria (*Madden* C.J.) : *Ahern* v. *Cullis*, (1914) V.L.R., 66 ; 35 A.L.T., 107, affirmed.

APPEAL from the Supreme Court of Victoria.

At the Court of Petty Sessions at Melbourne an information was heard whereby Timothy Ahern charged that Gibbs Cullis did within the limits of the City of Melbourne, between sunset on 21st November 1913 and sunrise of the following day, drive a vehicle, to wit a motor cycle, without having a good and serviceable lamp so constructed and fixed and kept lighted that the light therefrom should be distinctly visible from the rear of such vehicle. The prosecution was founded on a by-law of the City of Melbourne dated 28th April 1913, and purporting to have been made in pursuance of the powers conferred by sec. 91 of the Act 6 Vict. No. 7, which provided that " from and after the date of this by-law coming into operation any person who between sunset of any day and sunrise of the following day shall in upon or along any of the roads or streets within the City of Melbourne drive any vehicle of whatsoever kind without having a good and serviceable lamp so constructed and fixed and kept lighted that the light therefrom shall be distinctly visible from the rear of such vehicle " shall be liable to a penalty.

At the time the alleged offence was committed the defendant had upon his motor cycle a lighted lamp the light from which was visible from the front thereof but none of the light from which was visible from the rear thereof.

The information was dismissed, the justices holding that motor cycles were governed solely by the *Motor Car Act* 1909 and the regulations thereunder.

The informant then obtained an order *nisi* to review on the ground that the justices were wrong in holding as they did. The order *nisi* was heard by *Madden* C.J., who made it absolute : *Ahern* v. *Cullis* (1).

(1) (1914) V.L.R., 66 ; 35 A.L.T., 107.

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From that decision the defendant now, by special leave, appealed to the High Court.

McArthur K.C. and *Owen Dixon*, for the appellant. A motor cycle is not a "vehicle" within the meaning of the by-law. If it is, there is no power under sec. 91 of the Act 6 Vict. No. 7 to make the by-law. The by-law is repugnant to and inconsistent with the provisions of sec. 12 of the *Motor Car Act* 1909, and is therefore invalid by reason of sec. 15 (5). By excepting motor cycles from sub-sec. 1 of sec. 12, which requires motor cars to carry a rear light as well as a head light, and enacting in sub-sec. 2 that motor cycles are to carry a head light, the legislature has indicated clearly that a motor cycle need not carry a rear light. An examination of the *Motor Car Act* shows that the legislature intended to take up exclusively the whole field of legislation as to the control of motor cycles. If that is so the by-law is inconsistent with the Act. See *Australian Boot Trade Employees Federation* v. *Whybrow & Co.* (1); *Widgee Shire Council* v. *Bonney* (2); *Thomas* v. *Sutters* (3); *Dearden* v. *Townsend* (4); *Bentham* v. *Hoyle* (5); *Houston* v. *Moore* (6).

Mitchell K.C. and *Starke*, for the respondent, were not called on.

GRIFFITH C.J. This matter has been seriously argued, but I find some difficulty in treating it with sufficient gravity. A by-law made by the municipal authority of Melbourne provides—shortly—that it shall not be lawful to drive any vehicle between sunset and sunrise without a rear light. That by-law was made under a power to make by-laws "for the good rule and government of the town." There can be no doubt that such a by-law as that now in question is within those words. It is the fact indeed, we are told, that in Victoria all regulations as to lighting vehicles are made by municipal by-laws, and there is no Statute on the subject. We think that that point is not arguable.

(1) 10 C.L.R., 266, at p. 330.
(2) 4 C.L.R., 977, at pp. 982, 986.
(3) (1900) 1 Ch., 10.
(4) L.R. 1 Q.B., 10, at p. 13.
(5) 3 Q.B.D., 289, at p. 293.
(6) 5 Wheat., 1, at p. 22.

The only other point is that there is a Statute, No. 2237, which deals with the lighting of motor cars and motor cycles, and it is contended that the by-law, if applied to motor cycles, is inconsistent with that Statute. Sec. 12 (2) of that Act provides that "No person shall between sunset and sunrise drive ride or propel a motor cycle unless there is attached thereto a lighted lamp showing a bright white light visible in the direction towards which such motor cycle is being or is about to be driven or ridden sufficiently far to adequately signal the approach and position of such motor cycle and illuminate sufficiently the identifying number." That law applies to the whole of Victoria. It prescribes what I may call an irreducible minimum of obligation as to lighting of any person who drives a motor cycle within the State. But it does not follow that some other precaution may not be necessary in some parts of the State. In order to establish inconsistency between the by-law and the Statute the latter must be construed as covering the whole ground in respect of which the legislature has legislated, that is, as prescribing completely and exclusively the limits within which the liberty of drivers of motor cycles shall be confined. If it had been said expressly or by necessary implication that the only obligations that could be imposed upon drivers of motor cycles should be those mentioned in the Statute any attempt by a municipality to add to them would of course be inconsistent. I can find no indication of such an intention, and therefore am unable to find any inconsistency.

The appeal should be dismissed with costs.

ISAACS J. I concur.

POWERS J. I concur.

Appeal dismissed with costs.

Solicitor, for the appellant, *R. L. Cross.*

Solicitors, for the respondent, *Malleson, Stewart, Stawell & Nankivell.*

B. L.