

a constable or other person witnessing an infringement of these provisions to detain the offender without a warrant. The Court said that to construe the later statute in this manner would virtually be equivalent to drafting a new section. (t)

The consequences of having no lamp, in cases where the bicyclist is seeking to hold the authorities responsible for maintaining a defective roadway are adverted to in sec. 6, post.

5. Use of footpaths by cyclists—(a) Under the Common Law— Apart from statute or ordinance there is plainly no ground upon which it can be pronounced that any right is violated simply by taking a cycle, or indeed any vehicle along a footpath. This strip is as much a part of the highway as that which is specially laid out to be used by horse-drawn carriages. The only obligation, therefore, imposed by the common law upon a cyclist in respect to the use of a footpath would seem to be that he shall exercise that increased measure of care which is suggested by the fact that he is travelling where foot-passengers do not ordinarily expect to encounter vehicles.

Thus in *Purpl v. Greenfield* (a) we find the Court declining to lay it down as a universal proposition that any and every use of any kind of velocipede upon a sidewalk is unlawful, and expressing its approval of the trial judge's refusal to instruct the jury that, if the use of the sidewalk by the rider of a velocipede caused the plaintiff, while she was standing on the sidewalk, engaged in conversation,

(t) *Hatton v. Treeby* (1897) 2 Q.B. 452. [Action for assault by constable who stopped bicyclist.]

(a) (1884) 138 Mass. 1. The trial judge told the jury that the unlawfulness of such use of the sidewalk might be established by shewing the existence of a municipal ordinance forbidding it; but, as there was no evidence of any such specific prohibition, it was for them to say whether such use should be pronounced unlawful for the reason that it obstructed public travel, and was therefore a nuisance. So in *Reg. v. Mathias* (1861) 2 F. & F. 570, Byles, J., left to the jury the questions whether a perambulator was a vehicle which prevented the convenient use of a footway by passengers, and was in that sense a nuisance which one of the public had a right to remove, and whether, supposing the right to the use of the footway to be a mere easement, the owner of the soil was justified in removing it, on the ground that its presence was not justified by the nature of the easement. His statement of the law was that "the owner of the soil may remove anything which encumbers his close except such things as are the usual accompaniments of a large class of foot-passengers, being so small and light as neither to be a nuisance to other passengers or injurious to the soil." The jury found that the perambulator was a "usual accompaniment" of foot-passengers, but could not agree on the propositions submitted to it in the latter part of the direction as to size and weight and injury to the soil.