1895.

June 26 and July 2.

LEWIS *v.* MEERA LEBBE.

C. R., Negombo, 2,651.

Right of highway—Interference with such right—Public nuisance—Liability for damage resulting from frightening of passing horses—Evidence—Negligence.

All persons are entitled to pass and repass along a public highway unmolested, and anything which interferes with such right or renders the passage less convenient is a public nuisance, giving rise to an action for damages occasioned thereby.

In an action for damages arising from the frightening of passing horses by objects placed on or near the highway, negligence has nothing to do with the cause of action. It should be proved that the objects were such as were likely to frighten ordinary horses, and that the damage was occasioned directly by such objects.

The mere placing temporarily, by the roadside, of a bag of rice is not in itself an unreasonable user of the road, or necessarily a public nuisance ; nor would the removal of it from the wheel track, as a horse was coming up, render the remover liable in damages, if the horse seeing the act of removal took fright and injured the carriage and harness.

IT appeared that the first defendant employed the second defendant to unload a boat laden with rice in bags. A public road ran alongside the canal at the spot where the boat was lying. In the course of the unloading the second defendant

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had a bag of rice on the road clear of the wheel track. The plaintiff's horse and carriage came along the road at a walking pace. Just as they came near the spot where the bag was lying second defendant tried to pull the bag further away from the wheel track, and this act of his was supposed to have caused the horse to shy. The horse turned suddenly round, the driver fell off the box, and the horse, being thus left uncontrolled, ran away and damaged the carriage and harness. There was no evidence that there was anything improper or unusual in unloading the boat at this spot, nor of any specific negligence on the part of the second defendant, nor that the bag was an object likely to frighten a horse. There was only the fact that the horse shied at something and ran away. The Commissioner found that the second defendant negligently laid down a bag of rice on the roadway and near the wheel track of carriages in such a position that the horse took fright, shied, and bolted with the carriage, and cast the second defendant and his master, the first defendant, in damages.

The defendants appealed.

Bawa, for appellants.

Van Langenberg, for respondent.

Cur. adv. vult.

2nd July, 1895. BONSER, C.J.—

There can be no doubt that according to the law of England (and it was not suggested that the law of this Island differs on this point) all persons are entitled to pass and repass along a public highway unmolested, and that anything which interferes with such right or renders the passage less convenient is a public nuisance, giving rise to an action at the suit of any person who is specially damaged thereby. For instances of such suits, see *Hill v. New River Co.* (*9 B. and S. 303*), where defendant caused a jet of water to spout up in the road; *Hanis v. Mobbs* (*3 Exch. 263*), where the defendant left a house van with a steam plough attached on the grass by the roadside; *Wilkins v. Day* (*12 Q. B. D. 110*), where the defendant left a large roller by the side of the road with its shafts projecting over the roadway; and *Brown v. Eastern and Midlands Railway Co.* (*22. Q. B. D. 391*), where the defendants had placed a heap of rubbish on their own land near the highway. In all these cases the defendants were held liable for damage resulting from passing horses being frightened. But in all these cases there was some evidence that the objects were such as were likely to frighten ordinary horses. With this cause

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of action negligence has nothing to do. The questions are: (1) whether the act of the defendant occasioned a public nuisance; and (2) whether the damage resulted directly from that act.

I do not think that the mere placing of a bag of rice by the roadside is in itself an unreasonable user of the road, or necessarily a public nuisance. Of course, a person is not entitled to turn the roadside into a goods depôt by leaving bags there an unreasonable time. But it is not an unlawful use of a highway for a man carrying a burden to lay it down for a minute by the roadside to rest himself nor is a bag of rice an unusual object in this Island, or such as would be likely in itself to frighten a horse.

In the present case, however, the evidence shows that the Commissioner appears to find as a fact that the horse did not take fright at the bag, so that the placing of the bag there, whether lawful or unlawful, was not the proximate cause of the damage. What the horse took fright at was the act of the second defendant in pulling away the bag further from the wheel track. Even if the original placing of the bag by the roadside were an unlawful act, the removing it from the position would be a lawful act, and would not give rise to any action unless it were done negligently. Now, there is no evidence whatever of any such negligence, nor does the Commissioner find that it was done negligently. He finds that the placing of the bag there was done negligently, but that was not, as I have stated, the proximate cause of the damage.

For these reasons I am of opinion that the judgment ought to have been for the defendant.

I cannot help thinking that the fact, which was adduced in evidence by the plaintiff, that the second defendant had been fined in the Police Court for placing the bag by the roadside influenced the Commissioner's mind, and that he assumed that that conviction established the second defendant's liability.

The appeal will be allowed.