by citizens, as obstruction of a highway, it is a "public nuisance." An individual who suffers pecuniary damage as a direct consequence of such obstruction may maintain an action as for a private nuisance. 10 Cyc. of Eng. 81. "The question of negligence is not involved in an action for a nuisance," 29 Cyc. 1155. "If there be an act done upon a part of the highway which is not a reasonable user of it, and which has the effect of endangering its use to others, and damage results from such to one in the course of a lawful user of the highway, an action will lie for such damage." *Harris* v. *Mobbs*, 3 Ex. D. 268.

In *Wilkins* v. *Day*, 12 Q.B.D. 110, plaintiff's pony shied at the shafts of a roller slightly projecting from the side of a road, over the metalled part of the road; plaintiff's wife was thrown out and killed; plaintiff was held entitled to recover.

"The law of negligence is brought into intimate association with the law of nuisance. So far as nuisance is caused by imperfect action, or omission to act, where the action of a prudent man, according to the circumstances, is demanded, it may be proceeded against indifferently as a negligent act or a nuisance. Cases which involve infringements of public rights are more usually proceeded against as nuisances than for negligence. Beven on Negligence, Can. ed., 386.

The cases cited above (*Harris* v. *Mobbs* and *Wilkins* v. *Day*), were for nuisances. The form of action given in Bullen & Leake's Precedents, for an obstruction of a highway resulting in private damage, is for a nuisance.

In *Pederson* v. *Paterson* (above) the real point at issue was this, was the obstruction which the burned car caused to the highway a reasonable user thereof. It was of no importance, therefore, how the car got into the ditch, or that the driver was unlicensed, for the car in the roadway was clearly the proximate cause of the runaway horse. As to that the motto *res ipsa loquitur* seems undoubtedly applicable.

Was it a reasonable user of the highway to leave the burned car in the side of the road, unguarded and uncovered, after seven o'clock on Sunday morning? The result proves that it was calculated to frighten a horse, not shewn to be other than normal. It is not said that any attempt was made to move the car from the roadway after the defendant was shewn its position. Surely the onus at least was on him to shew that he had done all that was reasonably possible to avoid danger to travellers. It does not appear that he thought of that obligation.

The trial Judge said "negligence is the foundation of the action. Before the plaintiff can recover he must bring that home to the defendant." Is not that misplacing the burden of proof? But even so, upon the ground *res ipsa loquitur*, was not the defendant bound to prove that leaving his car in such a position and condition was not negligence; should he not have been called upon to prove that the car could not have been moved on Sunday morning, or that it could not have been rendered less likely to frighten horses? On this ground of negligence, the ditching of the car and even the burning of the car—both of which caused the condition which frightened the horse—were *primâ facie* proof of negligence; prudent people do not inspect wrecked cars with lighted matches. It is on this point that the fact that the car was not driven by a licensed person may be of some evidentiary value.