have made some such remark as that attributed to him, he does deny that he had his pipe out at the time, and though several witnesses were called by defendants to show the manner of his driving as he was approaching the place of the accident none of them say he had his pipe out at the time. They describe what he was doing with his hands. Besides, there is evidence that he is an experienced and very careful driver. It is also shown that he had driven along this highway, past the engine house, over thirty times previously; but although he saw the whistle, he had never heard it blown before, and was not then expecting it to blow.

There is a rise here in the road, between the engine house and the village, so that a conveyance coming from the village cannot be seen farther away from the engine house than about 300 feet. If the engineer had in this instance taken his usual precaution to look out on the highway immediately before blowing the whistle, as he should have done, he would have seen plaintiff's stallion, and could have avoided the accident. His explanation for not having taken that precaution was because he and the branchman had just come into the building about a minute before, and there was then no one in sight on the highway. That is quite consistent with the fact that the plaintiff's horse was concealed by the elevation in the highway when the engineer went into into the building, and that the horse, at an ordinary walking pace, had reached the point where the accident happened (120 feet from the building) when the whistle blew. It may be assumed that a horse will walk as fast as a man at a ordinary pace; now a man will walk over 240 feet in a minute without effort whilst plaintiff's horse required to walk only about 180 feet to reach the place of the accident after the engineer went into the engine house, and before he blew the whistle.

Assuming that if the driver had been on the alert, anticipating the trouble and holding a tight rein when the whistle blew, the accident might have been avoided, the fact that he was not do.s not establish contributory negligence on his part under the circumstances here.

The horse is described as unusually quiet and steady, accustomed to be driven with the reins hanging loosely when walking, as at this time; the driver had driven him along this road past the engine house over thirty times before this, and never saw any necessity for more than ordinary precaution. He was driving on this occasion in the manner and with the attention which he had found by previous experience to be sufficient for ordinary purposes with this horse. This was all he was bound to do.

In Smith on Negligence, 2 Eng. ed., pp. 152-3 (Bla. Ser.), contributory negligence is thus defined: "When the plaintiff has proved, according to his evidence, that the act of the defendant has caused the injury of which he complains, the defendant in his turn may prove that the plaintiff, by his own act, contributed to cause the injury, and that the plaintiff might, by the exercise of ordinary care, have avoided the consequences of the defendant's negligence. But such proof is not in itself sufficient to destroy the plaintiff's claim, and the defendant must go farther, and show that the plaintiff's negligence was of such a character that the exercise of ordinary care upon the defendant's part would have prevented the plaintiff's negligent act from causing the injury, and this is the sort of negligence which the law calls contributory negligence."