

in proving that this apparatus was in good condition in January, 1910. All plaintiff says he did in the way of testing the apparatus was to put a fire on in it the first cold weather the preceding fall, and wait to see that it was all right. He did not try individual radiators to see that they heated, or do anything more than put a fire on and see that it burned. Surely that alone could not be taken as a sufficient test. The plumber's evidence is stronger. It is that of a man of wide experience, thoroughly honest and disinterested. He says everything was in good condition; but it must be remembered he first saw the apparatus after the accident had occurred and the water been run off, and so in another place he explains that all he did was to look over outside and so far as he could see everything was in good condition. If the matter ended here, I suppose, applying the doctrine of *res ipsa loquitur*, I would be justified, upon this evidence, in inferring that there must have been negligence on defendant's part or otherwise bursting would not have occurred; but in the face of the direct evidence we have from defendant and his wife, I do not think I can do so.

Defendant swears that good fires were kept on at all times but still they could not keep the house warm. He says he complained to plaintiff who promised to see about it. In particular, he said the radiators that broke would never become heated—never more than warm, and at most times not even warm. He admitted that both on the day before the accident and the day before that, he was out of the house in the afternoon for an hour and a half or two hours, but he swears that on both occasions he banked fire when he went out and found a good fire on when he returned. His wife's evidence is even stronger. She swears they left plaintiff's house on account of it being cold (notice of their going was given before the breaking happened)—that at different times she complained to plaintiff generally about house being cold and particularly about these radiators that subsequently broke—that with her, at different times, he went over these radiators and could not account for their not heating, and promised to see to them. She corroborates her husband as to their keeping at all times a big fire on, and as to their banking it the day they met plaintiff.