leave a vacuum in the higher pipes, and, it is said, cause them to burst, when the water is afterwards forced into contact with the air in the empty pipes above. The defendants claimed that there was a necessity for the whistle as a signal to to close or open the pipes, as occasion requires.

The road adjoining is higher than the land on which the building stands, being described as level with the top of the door-case of the engine house, thus exposing the roof and the whistle to view from the highway.

On the occasion complained of the plaintiff's stallion, in charge of his servant, happened to be coming out of the village along the highway, and when about 120 feet from the engine house the defendants' engineer blew the whistle; the noise and escaping steam frightened the stallion, causing him to turn suddenly round, upset the buggy and run away, doing the damage complained of. The engineer knew before he blew the whistle that the branchman had finished watering the streets, and had returned to the engine house. But, he explains, that he blew it "to warn any one else who might have a branch key to cease taking water." It appears a few branch keys are held by the firemen for public use in case of fire, and that they sometimes use the water for their own private purposes.

Owing to a rise in the road between the engine house and the village, a person travelling on the highway cannot be seen farther away than about three hundred feet from the engine house.

The plaintiff, in his statement of claim, alleged "that the defendants erected certain buildings and machinery for waterworks and fire protection purposes, containing a steam whistle, which, when blown, would, from its loudness and shrillness, naturally frighten horses passing near, and carelessly and negligently, and in breach of their said duty, erected the same so close to the said highway as to constitute and be a nuisance and source of danger to persons lawfully travelling with horses thereon."

*E. L. Dickenson*, for the plaintiff, contended that this case is governed by the rule of law laid down in that class of cases illustrated by *Fletcher* v. *Rylands*, 1 Exch. 265, and that therefore it was not necessary to prove negligence against the defendants. He cited the following authorities: *Fletcher* v. *Ryland*, L.R. 1 Exch. 265; *Hilliard* v. *Thurston*, 9 A.R. 523; *Powell* v. *Fall*, 9 Q.B.D. 597; Har. Mun. Man., 5 ed. 492. As to negligence: *Lawson* v. *Village of Alliston*, 19 O.R. 655; Smith on Negligence (Blackstone series), pp. 101, 104; *Stott* v. *G.T.R. Co.*, 24 C.P. 347. As to contributory negligence and proximate cause: *Sherwood* v. *City of Hamilton*, 37 U.C.R. 410; *Tyson* v. *G.T.R. Co.*, 20 U.C.R. 256; *Ridley* v. *Lamb*, 10 Q.B. 354; *Cornish* v. *Toronto St. R.W. Co.*, 23 C.P. 355; *Castor* v. *Uxbridge*, 39 U.C.R. 113; Smith on Negligence, *supra*, pp. 152, 157, and 165; *Forward* v. *City of Toronto and Chandler*, 22 O.R. 359.

*Garrow*, Q.C., for the defendants, on the contrary, contended that the case falls within the class of authorities to which belong *Wilkins* v. *Day*, 12 Q.B.D. 113, and *Brown* v. *Eastern Mid. R.W. Co.*, 22 Q.B.D. 391, and that in the absence of negligence defendants' are not liable. The defendants further contended that plaintiff's servant was guilty of contributory negligence, and they are therefore exonerated in either view. He cited the following: *Howe* v. *H. & N.W.*