formed intention of running an unwarranted risk. When it is admitted that the excellence of the air-brakes, is only conditional, who so bold as to deny that they are under an obligation to have some *certain* method of stopping their trains, in case of the failure of the air-brakes, other than the necessary ultimate cessation of motion consequent upon the withdrawal of the impelling force.

On this assumption, then, even supposing the excellence of the air-brakes in economising time to furnish a complete answer to the party complaining of injury from their use, was the action of the defendants in running so near the crossing as they did before attempting to stop, an actual saving of time? Plainly not. The mathematical mind, even in an embryotic state, will hardly assent to the proposition that to have stopped for three minutes, at a distance of a quarter of a mile from the crossing, would have occasioned a greater loss of time than to have stopped, for three minutes, at a distance of fifty yards from the same point.

If there be an admission of negligence on the part of the defendants in the manner of using their air-brakes, we are then brought to the discussion of whether or not the plaintiff contributed to the accident. On the declaration as restricted by the learned judge already named, the defendants apparently could not accuse the plaintiff of contributing to the accident; for his being at the crossing—though perhaps negligently—was nothing more than a condition necessary to its happening; while the proximate cause was the bursting of the tube, and the consequent failure of the air-brakes to take effect. And we are again brought face to face with the question which we have already noticed, "was the manner of using them negligent?"

If there were no common law negligence, and the plaintiff were driven to show breach of a statutory duty, there would seem to be more difficulty in coming to a satisfactory conclusion. There was, no doubt, an intention on the part of the defendants to stop, whether in obedience to the statute or not. From the report it does not appear that they intended to stop for a less time than three minutes; and when it was their duty so to stop, we must, in all fairness, presume that they would have complied with the statute, unless prevented by the accident to the brakes. That the duty was an absolute one seems beyond dispute; and we are again referred to the means by which they tried to fulfil it, and their failure. Whatever may have been the cause of the breach is immaterial in this view of the case, so that the breach has been committed. The question, then, is this, Is the breach of a statute "negligence," in the sense in which it is alleged in the declaration?

If it be asserted that where the plaintiff has declared upon negligence simply, and shows a breach of a public statute, he must fail? then the inference is irresistible that breach of a public statute is not negligence, *per se*; or being negligence, cannot be complained of except the statute be specially declared upon. As to the first, Lord Brougham says, in *Ferguson* v. *Kinnoul*, 9 Cl. & F. 289, "If the law casts a duty upon a person which he refuses or fails to perform, he is answerable in damages to those whom his refusal or failure injures." No distinction is drawn between the different sources from which law emanates. A duty is imposed. It is broken. The result—an action. Whence the duty? Common Law. The plaintiff succeeds. Does it make any difference that the duty is imposed by another and equally powerful arm of the law; or that it springs from the other of the two tributa-