ants were negligent, apart from the statute; and if so, how far the plaintiff contributed to the accident. Then, whether the defendants were negligent by reason simply of their breach of a statutory duty. And lastly, whether, if the only negligence be the breach of the statute, the plaintiff can succeed on the simple declaration of negligence.

On the first question, it may be well argued that the defendants were not guilty of negligence, since they had supplied themselves with the best known apparatus for bringing their train to a stop; that the fact itself of their possessing the latest invention showed them to be diligent rather than negligent in providing means for stopping their trains. "In a word," says the learned judge who dissented, "the air-brakes which they used were the best procurable contrivance for preventing a collision,"—upon which remark, it must be admitted, the fact of the collision itself is rather a severe commentary. So far as the providing themselves with the best known contrivance goes, it may be conceded that the defendants are acquitted of negligence. But, while they may have been very diligent in providing themselves with this appliance, the plaintiff is still entitled to complain that they were negligent in its use. This leads to the question, Why are they said to be the *best* known contrivance? Because a much greater force can be applied to the wheels, and therefore the train can be stopped in a shorter time than with hand-brakes—and time is saved. This is, confessedly, a benefit to the defendants. On the other hand, these brakes are shown to have failed, on an average, once in three months before this. So that they are devoid of the *certainty* which the hand-brakes possess. We have then before us two methods of producing a desired result. On the one hand, a method whose chief characteristic is to save time, with a possible—rather probable—failure of effect; on the other, certainty of action with a small loss of time. So when negligence is imputed, and, of the two courses to adopt, the defendants reject that which is certain, and adopt that which is uncertain, it seems only reasonable to say that, having chosen to run the risk, they should abide by the consequences. And it is manifestly no answer for the defendants to say that the adoption of the certain method would have resulted in a loss of time to *themselves*; when the experiment of economizing time has resulted in an injury to the party complaining. What skilled and careful engineer, being apprised of the impending danger of a collision, or an open drawbridge, in time to stop the train by means of the hand-brakes, or in time to use them if the air-brakes failed, would choose to let that valuable and irrecoverable time slip by, and rush on to imminent danger, trusting to an appliance which had already failed him on an average once in every three months! And what weight would his plea of economizing time have, in case of an accident? And at this point, where they must have known of the absolute duty imposed upon them to stop, where there was an especial danger from trains running on a different road, and at times not harmonizing with their own, there was certainly an especial duty cast upon them to use extraordinary vigilance and diligence in proportion to the increased risk—and this even apart from the statute. The necessity for increased vigilance imposes on them a duty to resort to a *certain* method of avoiding any impending danger. And if they rely on the fact that the danger is not always present there, they are guilty of more than negligence, which implies a mere passive state of the will—they are guilty of an actively