

But the present article would scarcely be complete if we did not express our opinion as to the source of what we fear those who, like ourselves, feel constrained to defer to the "authorities" will persist in regarding as an error on Mr. Ewart's part. We shall thus, perhaps, facilitate the attainment of that "consummation devoutly to be wished"—a clearer understanding of the actual nature of the issue between us.

According to one very eminent "authority" whose definition has constantly been quoted with approval by other scarcely less eminent "authorities," negligence is simply "the absence of care according to the circumstances" (a), and the same fountains of the law, as it is usually administered, have also supplied us with the doctrine that the only standard for ascertaining what constitutes the "absence of care" is the conduct which a man of ordinary sense, knowledge and experience is accustomed to show in his own affairs (b). This is the only instance in which jurisprudence frankly acknowledges its inability to furnish any practical test for determining the quality of acts except the behaviour of the typical citizen who is supposed to perform all his social duties faithfully. There is no need to take the opinion of a jury upon the question whether it is tortious to utter or print a defamatory statement, to knock a man down with a bludgeon, or trample down his flower beds. All that has to be decided in such cases is whether the evidence shows that the defendant committed the acts which are alleged to render him guilty of slander, battery, or trespass. That they are an infringement of legal rights is assumed. And the same principle obviously holds good in regard to obligations arising out of contract.

But it is clear that acts of the class just referred to may also be considered as tortious, for the reason that they are such that the typical citizen who fulfils his various duties to the other members of the community in which he lives, will refrain from committing them. Theoretically, therefore, the conduct of this typical citizen may be appropriately used as a test

(a) Willes, J., in *Faughan v. Taff Vale Ry. Co.*, 5 H. & N. 679 (p. 688).

(b) See Pollock on Torts (3 ed.) p. 24; Bowen Negl. pp. 16, 17.