

part of his letter. At all events we shall treat it as such provisionally, and proceed to the assault of the citadel of his position.

"Why," it is asked, "should we have a class of actions based upon a breach of duty, and decree that deceit, the gist of which is breach of duty, should be excluded from it?" Were it not for the fact that Mr. Ewart supposes this question to be one which will cause us serious embarrassment, we should have thought it "as plain as way to parish church," that it is wholly irrelevant. There is no warrant whatever for the assumption which underlies it. for "the authorities" do not exclude deceit from the class of actions referred to. The essential point of difference between our author and those obstinate people who will persist in standing "*super antiquas vias*" is not at all what is here insinuated, but simply this—that the former starts with the hypothesis that negligence is a generic term, covering all breaches of duty, while from the standpoint of the latter there are several distinct kinds of duties, among which are included both that duty the breach of which constitutes negligence, and that duty the breach of which constitutes deceit.

The dialectic situation, therefore, seems to be truly hopeless. If, on the one hand, Mr. Ewart is incapable of seeing, or declines to admit, that the real issue presented is that which we have here set forth, it is impossible to meet him in argument, for we shall have reached that deadlock which results when antagonists are unable to agree upon any starting point. If, on the other hand, he does admit that we have fairly stated the issue between us, we confess that our case has no support except what it obtains from "the authorities," and he has apparently taken up the position that these have no final jurisdiction in the premises. Will our correspondent show us some way out of this dilemma?

The discussion has now once more reached a point at which we should be warranted in cutting it short, pending a more definite restatement of Mr. Ewart's case—an amendment of his pleadings, so to speak—which will furnish some common ground upon which the argument can be continued.