MISREPRESENTATION AS NEGLIGENCE.

We note an article in an esteemed contemporary dealing with the legal effects of misrepresentation, contributed by Mr. J. S. Ewart, Q.C., of the Manitoba bar, as to which he invites criticism, it being a condensation of some chapters in a work he is publishing on the law of Deceit.

He states that misrepresentation gives rise to an action of negligence—a proposition which seems to us both novel and startling. The argument by which it is supported seems even more dangerous, and in its mixture of law and logic savors of those refined discussions which some centuries ago confounded the senses of real property lawyers in England.

"Negligence," says the writer, "must not, loosely, be thought of as mere carelessness; but more accurately as the neglect or disregard of some legal duty. . . . Misrepresentation to be actionable must be in breach of legal duty, and, therefore, must be actionable as such. But," he adds, "this is merely saying that for misrepresentation an action will lie *as for breach of duty*, that is, that an action of negligence will lie." Reduced to cardinal principles this is tantamount to saying that every cause of action gives rise to an action of negligence, inasmuch as every cause of action arises by reason of a breach of duty, i.e., for a neglect to perform such duty.

It is scarcely necessary to state that such is not the law, or to assert that the action of negligence lies only for the breach of a specific duty, that of exercising reasonable care. This is clearly stated by Brett, M.R., in the judgment in *Heaven* v. *Pender*, L.R. 11 Q.B.D. 503, where he defines negligence as "the neglect of the use of ordinary care or skill towards a person to whom the defendant owes the duty of observing ordinary care or skill."

A glance at any of the recognized authorities on the principles of negligence shows a clear distinction between actions of deceit and negligence in the presence or absence of intention. This distinction has been forcibly expressed by Fry, J.,