

Suppose that with the design of injuring my neighbour I allow accumulations of water to inundate his mines, am I not liable in an action of negligence? When was a plaintiff non-suited in negligence, because the defendant swore that the act complained of was accompanied by "design and purpose?"

You say that if negligence will lie for deceit that "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."

For my own part I would not include (in this generalization) causes of action arising out of contract (*a*); although historically much could be said in favour of their inclusion (*b*). But I would quite agree that all torts might be well sued upon as for breach of duty. You would say with Brett, M.R., that there must be "the neglect of the use of ordinary care or skill." I would not choose such language for general statement (although I would grant its perfect applicability to the case which the learned Judge had in hand); but if the word "care" be understood as meaning "care for the rights of others" (and that may well be), then I would agree that neglect of such carefulness is necessary for an action of negligence.

But I would also say that, when a man fraudulently represents to me that a merchant is wealthy, in order to obtain credit for him, from me, such a man is not observing or practising that care with regard to my rights which the law demands of him; that he is guilty of negligence of those rights; that for such negligence (plainly stating it as for breach of his duty to me) he is liable; which is equivalent to saying that I may sue him for negligence.

My proposed work is upon estoppel; not upon deceit.

JOHN S. EWART.

Winnipeg, Dec., 1897.

[We refer to this letter in our editorial columns.--ED. C.L.J.]

(a) See *Heaton v. Pender*, (1881), 11 Q.B.D., at p. 507.

(b) In early periods breaches of contract were so far (even public) wrongs, that judgment for plaintiff was accompanied by a fine to the King.