

savours of the infancy of metaphysics and jurisprudence, and is entirely out of harmony with the tendencies of that evolutionary process which, by the introduction of more and more minute differentiations, is constantly imparting increased clearness and definiteness to the fundamental conceptions of every science. In other words we are invited to adopt a theory which implies retrogression not advance. This fact alone is an insuperable obstacle to its acceptance.

After having made these rather lengthy comments upon what we regard as the essential and fundamental error of our antagonist, it would, we think, be trying the patience of our readers too far if we undertook to deal with all the minor details of his letter. One or two of his points, however, seem to call for a summary notice.

We do not feel at all dismayed or disconcerted by the question which Mr. Ewart triumphantly puts in one of the concluding paragraphs of this communication. "When," he asks, "was a plaintiff non-suited in negligence because the defendant swore that the act complained of was accompanied by design and purpose?" Never, we sincerely hope, for the veriest ignoramus of a backwoods Dogberry would scarcely commit such a solecism in procedure as to deny the plaintiff the right of having his case tried on the theory on which his declaration is framed. Here again we seem to trace the effects of that lack of humour which we have already deplored in our adversary. Such an extraordinary potency we surely never attributed to an oath of the defendant's by any pleader, dead or alive. And even if this objection be waived it is certainly not easy to see what material advantage the defendant would gain by deliberately alleging that his act was wilful instead of being merely careless. Would Mr. Ewart expect that a client of his would be mulcted in smaller damages if the jury adopted the view suggested by such an allegation? We strongly advise him not to trifle with the common sense of the average panel by any such endeavour to turn the flank of his opponent.

In another place Mr. Ewart, with a condescension for which, under the circumstances, we cannot be too grateful,