

Brunswick statute demonstrate that set-off as used in the latter Act is not synonymous with defence but is co-extensive in meaning and effect with both set-off and counter-claim.

This conclusion properly ends the inquiry I have ventured to make, if it were not essential to point out that a diversity of opinion exists in England as to the scope to be given to counter-claims under the Judicature Act. The authorities are all one way that counter-claim is an independent action, but they are not agreed as to the extent of defendant's right to set it up. One view is that a counter-claim must have its origin in the transaction in which the plaintiff's action arose, while another body of judicial opinion permits causes of action to be opposed to one another regardless of any connection between them, whenever they may be conveniently tried together. Commenting on Order xix., rule 3, Hall, V.C., in *Padwick v. Scott*, 2 Ch. D. 744, said: "That rule is principally addressed to a difficulty which arose under the old law, that you could not set off that which sounded in damages. Admitting that the rule may embrace cases of a different character, the set-off is to have the same effect as a statement of claim in a cross-action, so as to enable the court to pronounce a final judgment in the same action," and it must be a cross-action of a nature connected with the particular original cause of action, so as to be capable of being fairly and reasonably dealt with by way of set-off or counter-claim therein. The question again came before the same learned Vice-chancellor in *Harris v. Gamble*, 6 Ch. D. 748, and he acted upon his ruling laid down in the former case. In *Pellas v. Neptune Marine Insurance Co.*, 5 C.P.D. 40, Lord Justice Bramwell is thus reported: "The argument for the defendants was that whatever was a defence to a liquidated claim, has been made by Order xix., rule 3, a defence to an unliquidated claim. I cannot assent to that argument; according to it, if A. sues B. for damages for breaking his leg, B. may set up as a defence a claim against A. as the acceptor of a bill of exchange; is it possible to say that that can be deemed a defence." In *Westacott v. Bevan*, [1891] 1 Q. B. 778, Wills, J., says: "I take it that, ordinarily speaking, if a counter-claim is set up in respect of matters totally unconnected with the claim, the jurisdiction given by Order xix., rule 3, would be exercised and the counter-claim would not be allowed to be disposed of in the same action. But here the cross-claims are intimately connected one with the other.