

claim, it would seem, consists of a cross-claim, not necessarily extinguishing or destroying the plaintiff's demand. In other words, a set-off appears to consist of a defence to the original claim of the plaintiff; a counter-claim is the assertion of a separate and independent demand, which does not answer or destroy the original claim of the plaintiff." In *Gathercole v. Smith*, 7 Q.B.D. 626, Lush, L.J., makes a similar contention, and observes that the character of set-off as a defence is not altered by the Judicature Act. It is not an independent action; it is still a defence and nothing more. Hawkins, J., had occasion to distinguish between set-off and counter-claim in *Neale v. Clarke*, 4 Ex. D. 295, and describes the latter as a cross-action, as distinguished from set-off or matter of defence. In *Stumore v. Campbell*, [1892] 1 Q.B. 314, Lord Esher, M.R., after remarking that in some of the cases language has been used which would seem to imply that a counter-claim is sometimes in the nature of set-off and sometimes not, and that matter is occasionally pleaded as counter-claim which is really set-off, said: "Counter-claim is really in the nature of a cross-action. This Court has determined that, where there is a counter-claim, in settling the rights of parties, the claim and counter-claim are for all purposes, except execution, two independent actions." The relevancy of these quotations is not diminished by the circumstance that they refer to the meaning of set-off as used in the Judicature Act, since the construction given is precisely that borne by the term under the statutes of set-off of Geo. II.

Is set-off used in the New Brunswick Act in the sense it is agreed by the foregoing authorities it strictly bears, that is, as meaning matter of defence as distinct from and exclusive of matter of counter-claim? In such a view the right to set-off unliquidated damages must be taken to exist only in such cases where they have a direct and inseparable connection with the dealings and transactions which also gave rise to the subject-matter of the plaintiff's action.

In *Neck v. Taylor*, [1893] 1 Q. B. 562, Lord Esher, M.R., describes a counter-claim arising out of the transaction in respect of which the action was brought as being a defence to the action, and Lindley, L.J., in the same case said: "The matters set out in the counter-claim appear to me to be of such a nature and so closely connected with the cause of action that, whatever according to legal