certainly not one in which the plaintiffs in equity can ask the court to assume that the balance will be in their favour." And again, "It was said that the subjects of the suit in this court and of the action at law arise out of the same contract; but the one is for an account of transactions under the contract, and the other for damages for the breach of it. The object and subject matter are therefore totally distinct; and the fact that the agreement was the origin of both, does not form any bond of union for the purpose of supporting an injunction." It seems impossible to distinguish that case from the present, and I am of opinion that this plea of an equitable set-off cannot be supported. It was then contended that it might be supported as a plea of "never indebted." It amounts to this, however, only if it appears that no debt arose, but the declaration and plea show that a debt did arise. How was it to be satisfied? It cannot be said that it carried its own payment out of the dangers arising from the breach. The claim for breach of the agreement is a cross claim. There was no agreement that the debt which is admitted by the plea and declaration was to be paid out of the damages, or that the deficiency was to be made good out of the damages.

Keating, J.—I am entirely of the same opinion. It is conceded that a claim for unliquidated damages cannot be set off at law, and no authority has been cited to show that the Court of Chancery would deal with such a claim until the amount had been ascertained. In *Rawson* v. *Samuel* it was so. In the Irish case cited, the unliquidated demand was first liquidated before it was dealt with. For the reasons stated by my Lord I agree that the plea cannot be supported as amounting to the general issue.

Brett, J.—I am of the same opinion. The plea is bad at law because the damages are unliquidated. It is also bad in equity, first, because the claims are unconnected; and secondly, because the damages being unliquidated, the Court of Chancery would not grant an immediate and unconditional injunction. Also, it does not amount to a plea of the general issue. The agreement, taken most favourably for the defendant, is that if there is a deficiency on the sales, the defendant will pay it, *i.e.*, become indebted to the plaintiffs for money advanced. On that the debt arose. There the defence is that the deficiency was caused by the plaintiffs' own fault. That is, if true, a matter for a cross action.

Denman, J.—I am of the same opinion.

Judgment for plaintiffs.

COURT OF APPEAL IN CHANCERY.

Gaunt v. Fynney.

Nuisance—Noise—Vibration—Light—Delay—Damages.

The defendant in Jan., 1865, erected a steam-engine in a shed adjoining the stable belonging to the plaintiffs, by which the stable was rendered unfit for horses, and some inconvenience occasioned in the plaintiffs' dwelling-house. No complaint was made by the plaintiffs until June, 1870.

Held (affirming the decision of the Master of the Rolls), that an injunction could not be granted under the circumstances to restrain the defendant from working the engine.

A nuisance by noise, supposing malice to be out of the question, is a question of degree. It is not every occasional and accidental noise more loud or harsh than usual, that will entitle a plaintiff to an injunction where the general case of "habitual nuisance" is not satisfactorily proved.

Bill dismissed.

[27 L. T. N. S. 569—Nov. 4th, 1872.]

This was an appeal from a decree of the Master of the Rolls (reported 26 L. T. Rep. N. S. 208). A full statement of the facts and arguments will be found in the judgment of the Lord Chancellor.

Sir *R. Baggallay*, Q.C. *Anderson*, Q.C. and *Rowcliffe*, for the plaintiffs, relied upon: *Hindley* v. *Emery*, 13 L.T. Rep. N.S. 272; Rep. 1 Eq. 52; *Durell* v. *Pritchard*. L. Rep. 1 Ch. App. 244; *Cooke* v. *Forbes*, 17 L. T. Rep. N. S. 371; L. Rep. 5 Eq. 166; *Goldsmith* v. *Tunbridge Wells Commissioners*, 14 L. T. Rep. N. S. 154; L. Rep. 1 Ch. App. 349; *Yates* v. *Jack*, 14 L. T. Rep. N. S. 151; L. Rep. 1 Ch. App. 295; *Dent* v. *Auction Mart Company*, L. Rep. 2 Eq. 238; 14 L. T. Rep. N. S. 827; *Saville* v. *Kilner*, 26 L. T. Rep. N. S. 277; Joyce on injunctions, p. 201. The *Solicitor-General* and *Fry*, Q. C. for thedefendant, referred to *Curriers' Company* v. *Corbett*, 12 L. T. Rep. N. S. 169; on app. 13 L. T. Rep, N. S. 154; *Robson* v. *Whittingham* L. Rep. 1 Ch. App. 442; 13 L. T. Rep. N. S. 730: *Clarke* v. *Clark*, L. Rep. 1 Ch. App. 16; 13 L. T. Rep. N. S. 482; *St. Helen's Smelting Company* v. *Tipping*, 12 L. T. Rep. N. S. 766; 11 H. L. Cas. 642, 650; *Crump* v. *Lambert*, L. Rep. 3 Eq. 409; 17 L. T. Rep. N. S. 133; *Soltau* v. *De Held*, 2 Sim. N. S. 133.

The Lord Chancellor (Selborne).—The plaintiffs, who are unmarried ladies living at Leek, in Staffordshire, ask for an injunction (with damages) to restrain an alleged nuisance by noise and vibration, and to restrain alleged trespasses by encroachment on land and obstruction of light. The Master of the Rolls has made a decree refusing an injunction, but grant-