Greene, Q. C., and *Walford*, for the respondent, were not called upon.

WOOD, L. J.—The strongest point in this case is, that the demand of the plaintiff was in the first instance shaped in the way of damages. As regards the actual state of things in the present case, the question whether injury is or is not done to the plaintiff in cases of this description has been fully considered in *Clarke* v. *Clark Durell* v. *Pritchard* (*ubi sup.*) There is a wall of fifty-six feet in height, erected by the defendant in substitution for a wall of twenty-six feet, and at a distance of fourteen feet only, upon the average, from the plaintiff's back windows. There is no doubt that the light and air have been considerably diminished: at the same time, as is generally the case, some compensation is given. There is a recess in one part of the wall, and an open space left in another part, but what guarantee has the plaintiff for the continuance of such accomodation? This accomodation, therefore, on which the defendant has laid some stress in his evidence, cannot be taken into account in estimating the injury sustained. I certainly am inclined to think that Lord Cranworth, L. C., carried a little too far the principle laid down by him in *Yates* v. *Jack*, 14 W. R. 618, L. R. 1 Ch. 295, that the owner of ancient lights is entitled not only to sufficient light for the purpose of his then business, but to all the light which he had enjoyed previously to the interruption sought to be restrained; but that is needless to be considered here, as in the present case there was an absolute interference with the plaintiff's light. That being so, there is no question but that the plaintiff might have filed her bill, and moved for an injunction while the factory was in course of erection. Now the factory was completed for all practical purposes in December, but the plaintiff's agent first complained on the 10th of January. The remarks of Sir G. Turner, L. J., in *Durell* v. *Pritchard*, as to the practice of the Court with respect to mandatory injunctions mean simply this—that the Court will not interfere to the extent of pulling down a building already finished, unless where very serious damage would otherwise ensue. Delay on the part of the plaintiff has been spoken of, but I think that a month was not a very long time for a reversioner like the plaintiff to become acquainted with what was going on and make up her mind to interfere. The case originally assumed the complexion of a mere question of damages; but £800 is a large sum, and the defendant did not choose to come in to such terms. It cannot, however, be said that the light and air enjoyed by another may be taken by any one with impunity on the condition of paying him damages for the deprivation, to be assessed possibly somewhat as claims of compensation are assessed under the Lands Clauses Act; although the plaintiff may all along have been willing enough to take damages, provided she could get the sum she demanded. The question as to noise and vibration rests on a different footing. The Court, in my opinion, has jurisdiction to direct an inquiry as to damages in this case. It is in evidence that a steam-engine and circular saw are in constant work from morning to night fourteen feet from the windows of one of the houses, and that must be an annoyance amounting to a nuisance, if *Soltau* v. *DeHeld*, 2 Sim. N. S. 150, be law. The decree of the Vice-Chancellor must be sustained, and the appeal dismissed.

SELWYN, L. J.—I am of the same opinion. The defendant has wholly failed to prove that the delay of the plaintiff in commencing proceedings to establish her right was such as to disentitle her to relief. With respect to the substantial injury which the evidence shows the plaintiff to have sustasned, the case of *Durell* v. *Pritchard*, at first sight, would seem to justify the Court in granting a mandatory injunction. *Robson* v. *Wittingham*, however, shows that that class of cases has been carried too far. I think, therefore, that the Vice-Chancellor was right in limiting the relief to an inquiry as to damages sustained by the plaintiff, and not granting a mandatory injunction. The case goes far beyond the principle laid down in *Clarke* v. *Clark*, inasmuch as it is clearly proved that the plaintiff has in the present case sustained substantial injury; and so I agree with the Lord Justice that the appeal must be dismissed.

CORRESPONDENCE.

Division Courts—Evidence of parties to suit.

TO THE EDITORS OF THE LAW JOURNAL.

GENTLEMEN,—A point has arisen in our Division Court here, upon which I should be most happy to have your opinion.

It has been customary for our Judge, under the 102nd section of the Division Court Act, to allow plaintiffs to go into the witness box as of right, and prove their claims, when the amount is $8 00 or under. At the last Division Court held here, objection was taken that the plaintiff in a certain suit had no right to swear to his claim until he first gave sufficient evidence to lay the foundation of his claim, or to satisfy the Judge that a debt had been contracted; and that then it was discretionary with the Judge to allow him to swear as to the amount. The Judge absolutely refused to listen to the objection, and said there was no such law in the Division Court Act.

If the Judge is right, I see no sense whatever in the section.

I cannot see why a party should be allowed to prove his own claim under $8 00, any more than over that amount, unless the statute expressly gives him the right to do so, which I think it does not.

By giving your opinion at length on the section referred to, you will much oblige

Yours very truly,

INQUIRER.

Perth, July 17, 1868.

[See Editorial remarks.]—EDS. L. J.