inferior prices than they might and would have been; and the plaintiffs also negligently and improperly sold the several goods at prices much below the market prices, of such several goods when sold, and before this suit received the proceeds thereof; and the defendant further says that the said goods before this suit could and might and ought to have been sold and realised the sales thereof, and but for such bad and improper care, and negligent and improper sales, would have realized sufficient, and much more than sufficient, to have fully paid and satisfied the whole of the moneys in the declaration mentioned, and the said acceptances and claims of the plaintiffs in respect thereof, and now sued for, if the same had been taken due and proper care of by the plaintiffs as aforesaid, and sold with due and proper care; and that by and through the mere negligence, wilful default, and improper conduct of the plaintiffs as aforesaid, and in effecting such sales, the security of the said goods became and was wholly lost to the defendant, and the said goods and the proceeds thereof became and were before this suit and are insufficient to discharge the said acceptances and moneys now sued for.

Demurrer to fourth plea and joinder.

Cohen in support of the demurrer.—(1.) This is simply an attempt to set-off a claim for unliquidated damages against a debt. The doctrine of equitable set-off is explained in *Rawson* v. *Samuel* 1 Craig & Ph. 178, where Lord Cottenham says: "We speak familiarly of equitable set-off as distinguished from the set-off at law, but it will be found that this equitable set-off exists in cases where the party seeking the benefit of it can show some equitable ground for being protected against his adversary's demand. The mere existence of cross demands is not sufficient: *Whyte* v. *O'Brien*, 1 S. & S. 551, although it is difficult to find any other ground for the order in *Williams* v. *Davis*, 2 Sim. 461 as reported. In the present case there are not even cross demands, as it cannot be assumed that the balance of the account will be found to be in favour of the defendants at law. Is there, then, any equity in preventing a party who has recovered damages at law from receiving them, because he may be found to be indebted upon the balance of an unsettled account, to the party against whom the damages have been recovered? Suppose the balance should be found to be due to the plaintiff at law, what compensation can be made to him for the injury he must have sustained by the delay? The jury assesses their damages as the compensation due at the time of their verdict. Their verdict may be no compensation for the additional injury which the delay in payment may occasion." And in Story's Equity Jurisprudence, ss. 1436, 1443, where the doctrine of the civil law is also treated. This is not a case in which a court of equity would grant an immediate, unconditional, and permanent injunction to restrain the plaintiffs. There is no general equity to restrain a person from suing because the opposite party has a claim which he may bring forward at some future time. If the plea means that the cause of action arose from the neglect of the plaintiffs, and not otherwise, such plea is unknown in actions of debt. (2) My learned friend cannot maintain that the plea amounts simply to the general issue. The court cannot put this interpretation upon it, unless that be clearly its meaning. The agreement between the parties did not stipulate that if any deficiency was occasioned by the plaintiffs' negligence, the defendant should not be liable for the balance. There was a debt which has not been swept away by anything.

Butt, Q.C. *Baylis*, and *F. P. Tomlinson* for the defendants.—This plea is good, for the court can do entire justice between the parties: Bullen and Leake's Prec. Plead., p. 556, note; *Mutual Loan Fund Association* v. *Sudlow* 28 L. J. 108, C. P. The plaintiffs having agreed to take their money out of the proceeds of the goods, have prevented themselves from doing so by their own transaction. As to there being no equity see *Stimson* v. *Hall*, 1 H. & N. 831; *Beasley* v. *D'Arcy*, Scholes & Lef. 403, note.

Bovill, C. J.—The claim which the defendant endeavours to set-off by his equitable plea is a claim for unliquidated damages. That claim therefore would not be available as a defence at law. Neither could the Court of Chancery deal with the matter. If the defendant had asked for an injunction the Court of Chancery would certainly not have granted it immediately and unconditionally, but would have imposed terms. The terms would probably have been that the parties should proceed to try the question at law, and ascertain the amount of damages. Considerable delay might thus be caused, and there would have to be a further provision for compensation for that delay, and terms imposed as to bringing money into court. In *Rawson* v. *Samuel* it must be taken that for purposes of the decision the damages to be set-off were liquidated, because they were to be ascertained by taking an account. From one point of view they were unliquidated, because there was a long account, and the balance had to be ascertained. Lord Cottenham, at p. 177, says: "Whatever weight may be attached to this statement of belief as to the probable balance of a lon and complicated account, the case is