to the lot on which he was settling, was liable to the Crown or to any one else as a wrong doer. Nor are we ready to affirm that a by-law of the township which prohibited under a penalty, the cutting down of trees by a settler, and for such a purpose would be within the spirit, though within the letter, of the Act a by-law "for the preserving of timber trees." But it does not, on the other hand, follow that, subordinate to the leading object of road allowances, the right to sell, if not the right to preserve, will not give to the municipality a qualified property in the timber trees growing upon such allowances.

The power to sell does, in our opinion, give the right to take the price for municipal purposes, and it must carry with it the power to confer upon the purchaser a right to enter, cut, and take away what is sold to him; but if the Township Council has such a property in the trees that they may sell them, and may pass by-laws to preserve them from depredation, which must be by inflicting a penalty, it appears to us that to enable them to enjoy the full advantage which the Legislature meant to confer, they must also have the right to recover from a wrong doer the value of such timber trees, when he cuts and takes them away. We think they have this right, and unlike the power to preserve or to sell, that they need not pass a by-law in order to exercise it. We think, also, that they may recover for such a cause of action on a count framed as the first count is, in which it appears to us the charge is the cutting and carrying away the growing timber. It is not a count *quare clausum fregit*.

There remains only the question as to the admission of the witness Tallen. Before the Evidence Act it was well settled that whatever interest a witness may have had, if he was divested of it by release or payment, or by any other means, when he was ready to be sworn, there was no objection to his competency. Numerous cases establish this proposition; many of them, *ex. gr*, that of co-partners, one of whom was made competent by release, being stronger than the present. The Evidence Act cannot be read so as to increase the objections on the score of competency. In the present case a release under seal of all the witness's interest was produced and proved.

We think the rule should be discharged.

ENGLISH REPORTS.

CHANCERY.

VISCOUNTESS GORT v. CLARK.

Light and air—Noise and vibration—Mandatory injunction—Damages.

Where the injury sought to be restrained has been completed before the filing of the bill, and the plaintiff has in the first instance, demanded damages, the Court will not grant a mandatory injunction, even where the injury is substantial, but will direct an inquiry as to damages.

The noise and vibration occassioned by a steam engine and circular saw considered an annoyance amounting to a nuisance, in respect of which an inquiry as to damages was granted.

Durell v. *Pritchard*, 14 W. R. 212, L. R. 1 Ch. 244, considered.

Decree of Stuart, V. C., affirmed.

This was an appeal from a decision of the Vice-Chancellor Stuart. The plaintiff was owner of a row of small tenements in Grosse-street Rathbone-place, which were let on lease to tenants, who sublet them in lodgings to persons of the working classes. Up to the month of August, 1864, at the back of the houses, fourteen feet from them only, was the back wall of a range of ancient stables in Black-Horse Yard, twenty-six feet in height. The defendant in that month, acquired the site of the stables, and began to erect thereon a factory, with an external wall fifty-six feet high, which was built up to its full height in the month of December, 1864, and the factory was completed and used soon after. On the 10th of January the agent of the plaintiff, who had hitherto not complained, wrote to the defendant, and complained that the factory wall interfered seriously with the access of light and air to the plaintiff's houses, and on the 26th of January wrote again, demanding £800 as compensation, and requiring in the alternative that the damage should be assessed by a surveyor. The defendant in reply, offered to purchase the freehold at a fair price, or to take a long lease of the premises; but his offer was declined, and a mandatory injunction threatened. The bill was filed in April, 1865, praying that the defendant might be restrained from erecting a wall higher than any wall which had existed on the site during the last twenty years, or raising any wall, by which the access of light and air to the back of the house might be impeded, and that the defendant might be ordered to reduce any wall already built by him to a height not greater than the original height of the stable wall, with an alternative prayer for an inquiry as to damages sustaind by the plaintiff. The plaintiff did not move for an injunction, but after answer amended her bill, and charged the existance of a nuisance, occassioned by the noise and vibration caused by a steam-engine and circular saw, which were at work in the factory from morning to night, and the smell of paint, used in painting the "self-coiling revolving shutters," of which the defendant was maker and patentee; in respect of which she prayed for an injunction or an inquiry as to damages.

The VICE-CHANCELLOR declined to grant the injunction, but directed an inquiry as to damages, in respect both of the loss of light and air. and of the annoyance caused by the noise and vibration. From this decision the defendant appealed.

Bacon, Q. C., and *Bevir*, for the appellant—We admit that the erection, to some extent, does interfere with the plaintiff's light and air, but her claim is an exaggerated one, and is not put forward in such a shape as to entitle her to relief in this court. She has herself made it a question of damages only, and this is a mere bill for £800, which ought to be dismissed, without prejudice to her right to bring an action. Delay is also fatal to her claim. She has stood by and allowed us to lay out £4,000, and it was too late in April, 1865, to ask for a mandatory injunction when the building was practically finished in December, 1864. As the plaintiff is a reversioner, the damage done to her is inappreciable, and the Court will not interfere on her behalf, when the result would be the ruin of our trade. They referred to *Clarke* v. *Clark*, 14 W. R. 115, L. R. 1 Ch. 16; *Durell* v. *Pritchard*, 14 W. R. 212, L. R. 1 Ch 244; *Currier's Company* v. *Corbett*, 13 W. R. 1056; *Robson* v. *Wittingham*, 14 W. R. 291, L. R. 1 Ch 442.