The remainder of their counterclaim is, however, of a much wider character. It alleges that under the proper construction of the agreement of 13th December, 1898, the Canadian company is entitled to the use of certain trade marks in connection with tires exported by them to countries outside America; but that the plaintiffs, along with two persons, Garland and Palmer, and an Australian company, none of whom is a party to the action, have fraudulently and with knowledge of the rights of the Canadian company conspired together to cheat them of their rights by registering the said trade marks in the name of the Australian company, and they ask for an injunction and damages against Palmer, Garland, the Australian company, and the plaintiffs.

The complaint of the Canadian company in this part of the counterclaim is that the defendants to the counterclaim, by certain acts done in Australia, have interfered with their trade there. Of the defendants to the counterclaim Palmer is the only one within the jurisdiction of the Court; Garland lives in Australia, and the Australian company has its head office there. The plaintiffs in this action, who are the remaining defendants to the counterclaim, have their head office in England, and have neither business nor offices in Ontario. None of the parties defendants to the counterclaim, except the defendant Palmer, has pleaded to it or admitted the jurisdiction of the Court.

I think an examination of the pleadings and of the issues sought to be raised by the counterclaim against the new parties is sufficient to establish the injustice to the plaintiffs of allowing the question of the Australian trade mark to be raised and disposed of in the present action. It is manifest that great delay must necessarily be encountered in taking the evidence, which must be taken in Australia as well as in England, in disposing of the question of the trade marks. In the meantime the defendants the Canadian company have everything to gain and nothing to lose by the delay, for they will, of course, continue to carry on the foreign business which the plaintiffs seek in the action to restrain. I can see no such intimate connection between the subject of the action and the subject of the counterclaim as to oblige the Court to require both to be disposed of in the same action. I can see that to allow the counterclaim would operate as so great a hardship upon the plaintiffs as to amount almost, if not entirely, to an actual denial of justice to them, and I am, therefore, of opinion that the appeal should be allowed as to that portion of the counterclaim which begins with the 16th paragraph of the defence and counterclaim, and relates to the