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STREET, J.

OCTOBER 24TH, 1902.

CHAMBERS.

DUNLOP PNEUMATIC TIRE CO. v. RYCKMAN.

*Pleading—Counterclaim—Exclusion of—Defendants to Counterclaim
out of Jurisdiction—Foreign Trade Mark, Subject of Counterclaim
—Hardship—Injustice.*

Appeal by plaintiffs and Palmer, one of the defendants to the counterclaim, from an order of the Master in Chambers refusing their application to strike out the counterclaim of the defendants the Dunlop Tire Company, referred to as "the Canadian company." The plaintiffs are referred to as "the English company."

W. M. Douglas, K.C., for the appellants.

W. E. Middleton, for the counterclaiming defendants.

STREET, J. (after setting out the facts at length):—The action is brought by the English company to restrain the defendants from exporting pneumatic tires from this continent and competing with the plaintiffs in their business in other parts of the world, contrary to the terms of the agreement of 13th December, 1898, which the plaintiffs say is binding upon all the defendants.

The defendants the Canadian company deny that the agreement is binding upon them, but say that, if it is, it does not represent the real bargain which was made between the plaintiffs and Ryckman, and they claim a rectification of it. They further say that the plaintiffs did not deliver the whole of the rights of the American company, as they agreed to do in the agreement, and that the Canadian company has been obliged to pay large sums to obtain those rights, and they ask that the plaintiffs be ordered to repay these sums and the damages they have been put to in consequence. They further ask for a declaration of their rights under certain parts of the agreement. All these claims are put in the form of a counterclaim by the Canadian company against the plaintiffs alone, and, in my opinion, they are very proper subjects for a counterclaim in this action.