

tiffs under agreements of 13th December, 1898, and 27th January, 1899, and also certain rights under the same agreements as extended by means of certain representations. By the counterclaim they alleged a breach of one of the agreements which they asked should be specifically performed, and set up a further claim based upon certain representations, asking, in that regard, a rectification of the agreements. They further alleged a conspiracy by plaintiffs with certain others, resident out of the jurisdiction, to defraud the defendants out of the beneficial use of the trade mark in Australia, relying on the agreements and the representation by which they were extended.

G. F. Shepley, K.C., for appellants.

A. B. Aylesworth, K.C., W. M. Douglas, K.C., and John Greer, for plaintiffs and defendants by counterclaim.

BOYD, C.—As to the last counterclaim, the only measure of relief was in damages, which it was nowhere alleged could not be recovered from the British company, and it was not needful for the ends of justice to bring in the new parties to the counterclaim, of which the inevitable effect would be to complicate an inquiry already promising to be cosmopolitan in its scope. Upon the well defined and separable litigation on equitable grounds for specific performance and rectification, the defendants were seeking to engraft the common law action for conspiracy against strangers to the record, and for the reasons given in *South African Republic v. La Compagnie Franco-Belge du Chemin de Fer du Nord*, [1897] 2 Ch. 487, such amalgamation should not be allowed. See *S. C.*, [1898] 1 Ch. 197. Order appealed from affirmed with costs, with leave to apply to amend the equitable claims as against the parties to the original record.

MEREDITH, J., concurred.

DECEMBER 22ND, 1902.

DIVISIONAL COURT.

HOLTBY v. FRENCH.

Mechanics' Liens—Defect in Building—Assent—Estoppel.

Appeal by defendant Edwin French from judgment of J. A. McAndrew, Official Referee, in action under *Mechanics' Lien Act*, finding plaintiffs entitled to recover \$679 for work done by them in the brick-work of a stable. The defence