which is not imposed either by the language or in the intention of the statute. Nor do I think it altogether without a bearing on the sound construction of the statute, that if a different interpretation be put upon the words cited, then a new peril will have been introduced into the lives of many workers who, notwithstanding debility and chronic disease, are most anxious and willing to devote their remaining powers to earning an independent livelihood. Should such persons be held to carry with them into and upon employment the serious additional liability alluded to, employment may become for such persons, often the most needy and deserving of the population, more difficult to obtain. I accordingly tender my dissent from the conclusions reached by the majority of your Lordships.

Appeal dismissed.

Counsel for Appellants—Simon, K.C.—Cuthbert—Smith. Agents—Barlow, Barlow, & Lyde, Solicitors.

Counsel for Respondent—Powell, K.C.—Stewart-Brown. Agents—Helder, Roberts, Walton, & Giles, Solicitors.

HOUSE OF LORDS.

Friday, March 18, 1910.

(Before the Lord Chancellor (Loreburn), Lords Macnaghten, Atkinson, Collins, and Shaw.)

LECOUTURIER AND OTHERS *v.* REY AND OTHERS.

(ON APPEAL FROM THE COURT OF APPEAL IN ENGLAND.)

Trade-Mark—Transfer—Foreign Judicial Assignation—Secret Process—Property in English Trade-Mark.

A law of a foreign country and a sale by a foreign court under that law cannot affect property not within the foreign jurisdiction.

The French monastery of Chartreuse, which manufactured liqueurs of that name by a secret process, was compulsorily dissolved under a French statute and its property confiscated. It had owned trade-marks in France, England, and elsewhere. The Chartreuse monks established a manufacture of liqueurs in Spain employing the old process.

Held that the property in the English trade-mark was not affected by the French confiscation, and still remained with the Chartreuse monks.

The appellant Lecouturier was the official liquidator under French law of the monastery of Chartreuse, and two reciprocal actions were brought to determine the ownership in the English trade-marks formerly belonging to the monks of Chartreuse. The *circumstances* are narrated in the judgment of Lord Macnaghten. The respondents were the expelled monks of Chartreuse. Judgment against the appellant was pronounced by the Court of Appeal (LORD ALVERSTONE, C.J., BUCKLEY and KENNEDY, L.JJ.).

Their Lordships gave considered judgment as follows:—

LORD MACNAGHTEN—Your Lordships are all, I think, agreed in holding that the decision of the Court of Appeal in both these cases is perfectly right. The facts are not in dispute. The principle of law on which the respondents, who were plaintiffs in the action, rely is well settled. It has been recognised and asserted over and over again in this House. There is no feature of novelty about the case unless one is to be found in the circumstances which led immediately to this litigation. A religious community of great antiquity, known as the Order of Carthusian Monks, had until lately its principal seat and its headquarters near the Dauphiné Alps not far from Grenoble, in the Department of Isère in France, at a monastery known as "La Grande Chartreuse." There was the residence of the Prior-General of the Order, and there was manufactured according to a secret process a liqueur of several sorts and colours known all over the world as "Chartreuse." To this trade-name and to the insignia by which they designated their manufacture the monks had vindicated their exclusive right in many lawsuits in England, and they possessed several trade-marks on the English register standing in the name of their procurator Abbé Rey. In 1901 there was passed in France a law called the Law of Associations, which declared illegal all unlicensed religious associations failing to obtain within a limited period authorisation from the State. The monks of La Grande Chartreuse applied for the requisite authorisation, but they did not succeed in obtaining it. Thereupon in due course the monastery of La Grande Chartreuse with its dependencies in France was dissolved. The monks were forcibly expelled from the country and all their property in France, including their distillery and their French trade-marks, was confiscated and sold. The particulars of sale purported to comprise the commercial business of the monks and "the customers and goodwill attached to the business." But two things which belonged to them—the secret of their manufacturing process and the reputation which their liqueurs had acquired in foreign countries and notably in England—were incapable of being seized or confiscated. When they were expelled from France and exiled from their old home, the monks of La Grande Chartreuse carried with them the secret of their manufacture and the power of securing the benefit of the reputation which their skill had gained for them abroad. After their expulsion from France the monks of La Grande Chartreuse transferred the headquarters of their Order to Lucca, in Italy, but they set up their business in Tarragona, in Spain. There, having

made an arrangement with the respondents La Union Agricola for the disposal of their output for a term of years, they began to make their liqueurs in the old way according to their old and secret process. The secret was jealously guarded, and the manufacture was carried on throughout the whole process by the monks themselves. The liqueurs so made bore the insignia of the Carthusian Order and the old trade-marks and labels, the only difference being a note to the effect that the liqueurs were now made at Tarragona. Then followed a warfare in England waged with varying success. On the one hand were the monks and La Union Agricola, on the other M. Lecouturier, the liquidator appointed by the French court to wind up the affairs of the dissolved monastery, and with the liquidator were the purchasers from him calling themselves La Compagnie Fermière de la Grande Chartreuse. The monks fought to preserve the remnant of their property which was beyond the reach of French law. The liquidator and the purchasers from him, who were not in possession of the monks' secret, strove to supplant them in the English market by adopting their insignia and representing that they were the proprietors of the genuine liqueur, "the old and world-renowned liqueur 'Chartreuse.'" At the outset the monks were victorious. On the strength of the trade-marks, registered in the name of their procurator, they stopped the importation into England of goods bearing their insignia and got up so as to represent or counterfeit their manufacture. Then by a contrivance which it is difficult to reconcile with the actual truth the liquidator procured the transfer of the English trade-marks to himself on the allegation that he was the assignee of Abbé Rey. This manœuvre turned the scale in favour of the appellants, and the monks in their turn were prevented from using their old trade-marks in England. The monks then brought this suit and at the same time moved to expunge the last entry from the Register of Trade-Marks. The Court of Appeal has decided in their favour, and the liquidator and the purchasers from him are now the appellants. The only plausible ground of appeal urged at the Bar was that under French law and by reason of their purchase from the liquidator the appellants were justified in doing what they have done. To me it seems perfectly plain that by the very nature of things a law of a foreign country and a sale by a foreign court under that law cannot affect property not within the reach of the foreign law or the jurisdiction of the foreign court charged with its administration. But it is certainly satisfactory to learn from the evidence of experts in French law that the Law of Associations is a penal law—a law of police and order—and is not considered to have any extra-territorial effect. It is also satisfactory to find that these legal experts confirm the conclusion which any lawyer would draw from a perusal of the French judgments in evidence in this case—that the sale by the liquidator of the property bought by the appellant company has not carried with it the English trade-marks or established the claim of the appellant company to represent their manufacture as the manufacture of the monks of La Grande Chartreuse, which most certainly it is not. I think that both appeals must be dismissed with costs.

LORD ATKINSON and LORD COLLINS concurred.

LORD SHAW—The appellant M. Henri Lecouturier in his statement of defence sets forth that he "is a French judicial officer, and in all his acts complained of in this action he has acted under the directions of the French courts having competent jurisdiction, and in accordance with decisions given by them for the purpose of carrying into effect the enactments of the Legislature of the French Republic." He has, it is added, no personal interest in the matter. M. Lecouturier has sold the liqueur business in France with the trade-marks in England to the Compagnie Fermière de la Grande Chartreuse, which company joins with him in his defence. The other defendants are his agents in this country. The plaintiff and respondent Celestine Marius Rey was for many years the Procurator of the Carthusian Order of Monks, residing at the monastery of La Grande Chartreuse near Grenoble in France. Herbault, the other plaintiff and respondent, is the General Superior. They sue in this action on behalf of themselves and all the other members of the Carthusian Order. That Order is a religious society founded in the eleventh century, and it is said to hold or have held property in various countries including France and England. Part of that property consists of the monastery of La Grande Chartreuse. It is maintained that the Order is in possession of a secret process or recipe for the manufacture of the liqueurs called Chartreuse, and it is not disputed that the business of manufacture has been conducted by the monks in that locality; that a trade of a profitable nature and of large dimensions has been built up in these articles; and that sales thereof have been conducted for many years past, not in France alone, but in other countries of the world. In some of these countries trade-marks for the liqueurs have been obtained. One of these countries is England. One of the chief points to be settled in this case is as to the effect of a law passed by the Legislature of the French Republic on the 1st July 1901 and amended on the 4th December 1902. A translation of this with certain brief supplements appears among the papers, as also a translation of decrees of the 16th August 1901 by M. Loubet, French Minister of the Interior, made pursuant to articles 18 and 20 of the law of the 1st July. The law and decrees cannot be perused without a consciousness of the importance of the subject-matter with which they deal, touching as they do at various points the structure and development of French society, and affecting its

law and the property of French subjects in much detail. The "comity of nations" is an expression which is familiar but necessarily indefinite. The attempts to fix it down into a set of rules of legal or binding effect, and the discussions which have accompanied such attempts, have been very fruitless. But (bearing in mind that we are dealing in the present case with the relations of French citizens, and a business whose centre was, and whose conduct was mainly, in France) I take it at least that that comity tends towards encouraging the co-operation of civilised communities by giving effect so far as may be to the regulation by the Legislature and courts of the domicile of the parties of the relations and rights of these parties. Such regulations should upon all suitable occasions be treated with most favourable regard, and with the desire to respect and apply the principles from which, so to speak, the central propositions emanate, so far as these can be accommodated to the practice and requirements of foreign judicatures. Nothing in the slightest degree inconsistent with this appears in the judgments of the Court below, and I proceed further to say that I think that it would be, so far as I can see, not acting in accordance with the true meaning and effect of the French Legislature and decrees, but acting contrary to that meaning and effect, to give them the application beyond the territory of the French Republic which is desired in this case. Throughout all the legislation as to the necessity for associations being sanctioned after application by the Government, as to no religious congregations being formed (art. 13) "without an authorisation given by a law which will determine the conditions of its work," as to the *ipso facto* dissolution of congregations not so authorised, and as to the sequestration of the effects and the appointment of an administrator and liquidator, and particularly throughout the regulations as to the conduct of the liquidator, the court to which he is answerable, and the realisation and distribution of property ingathered by him, I cannot trace anything, either express or implied, which suggests extra-territorial operation. And beyond the regulation of property within France as part of a scheme for dealing with a question reckoned to be of great social import in that country, I do not discern any intention, either expressed or implied, by the legislation or decrees to effect the transfer, or affect the holding of property in other countries to which the social and political problems as French problems did not extend. In short, and to take the present as an instance, I do not see anything conferring upon the liquidator of the property of the Carthusian Order a right to strip that Order of their possessions in all parts of the world. I do not think that what the French Legislature did can be read in this extreme sense. Whether effect would have been given by foreign courts to such legislation is therefore a question which is not really raised. The species of property which the respondents maintain are embraced within that committed to the appellant by his appointment of liquidator of the effects of the Carthusian Order are certain trade-marks registered in England. He has produced before the Registrar of Trade-Marks the decree of his appointment, and caused an application to be made at the British Patent Office for the entry of his name in the British Register of Trade-Marks, as "the subsequent proprietor of the trade-marks registered there on behalf of the said dissolved congregations" (all of which referred to the Grande Chartreuse), and such entry was made on the 2nd May 1905. It is, of course, admitted that the formality of registration cannot affect the fundamental rights of the parties as they fall to be determined in this action. The object of the action is to obtain an injunction to restrain the defendants from using the word "Chartreuse" in connection with the sale of liqueurs other than those manufactured by the plaintiffs. The second portion of the injunction is against the ordinary case of passing off the liqueurs manufactured by the defendants as the manufacture of the plaintiffs. The true question is—Who is entitled to use the term "Chartreuse" as denominative of a special manufacture of liqueur? Having given much attention to the evidence, I am of opinion that a sound judgment thereon has been given by the Court of Appeal. I cannot presume to put my opinion otherwise than in these sentences of Lord Alverstone, C.J., which I respectfully adopt—"I have not the slightest doubt that for a great many years before 1901 the word 'Chartreuse' or 'Grande Chartreuse' had acquired in the English liqueur market the secondary meaning that it was a liqueur manufactured by the monks of the monastery. Whether or not the monastery included the distillery, whether it included the outlying buildings, and whether the final product put into the bottles was actually bottled at the distillery or at the monastery is to my mind absolutely immaterial. It seems to me that what anybody would have understood it to mean would have been liqueur manufactured by the monks of the monastery of La Grande Chartreuse." That the liqueur was manufactured according to a secret process or recipe I hold to be proved. Whether the secret imparts any virtue to the liqueur, or whether the business and efforts of Lecouturier's assignees, working in the old locality, have succeeded in producing a liqueur as good or better, appears to me to be irrelevant, and on that head I think that the judgment of Lord Herschell in the Yorkshire Relish case—*Birmingham Vinegar Brewing Company* v. *Powell*, [1897] A.C. 710—is entirely applicable. Whether, as Lord Davey in that case said, the two articles are "a wonderful match" does not seem to me to be in point, except in one particular which is not favourable to the appellants, for the nearer you can bring in point of appearance, qualities, or properties one article or set of goods of your manufacture to others already protected

by a trade-mark, the clearer is the duty to avoid representing your goods as those others. Nor do I doubt that the use of the word "Chartreuse" by the appellants would of itself stamp the article which they produced with the reputation which it ought not to possess, namely, that the liqueur was made from the monks' secret recipe. It is said, however, that these trade-marks are the subject of assignment by virtue of the French legislation and Lecouturier's appointment under it. I have already dealt with that from the international point of view, but I desire to add this—in no view of that legislation could it be maintained that it transferred to a liquidator the secrets within the knowledge of the monks who have proceeded to foreign countries, and, particularly in Spain, have put into operation these business secrets, and are manufacturing according to them. In short, the business of Chartreuse liqueur as such is carried on by them, and the English trade-marks are therefore trade-marks in respect of a thing the business in which is not and cannot be conducted by the appellants. The trade-marks are in the latter, the business in the monks. Such severance is not legally possible. It was not possible before the leading English statute. As Fry, L.J., remarks in *Pinto* v. *Badman* (1891, 8 Rep. Pat. Cas. 181, at p. 194)—"It has been laid down by the clearest authority that a trade-mark can be assigned when it is transferred together with, to use Lord Cransworth's language, 'the manufacture of the goods in which the mark has been used to be affixed.'" And section 70 of the Patents, &c Act 1883 provides that "A trade-mark when registered shall be assigned and transferred only in connection with the goodwill of the business concerned in the particular goods or classes of goods for which it has been registered and shall be determinable with that goodwill." To maintain that there can be goodwill in a business the secret whereof is not transferred is of course out of the question. It is a significant commentary upon, and justification of, the view taken above with regard to the French legislation and decrees, that it seems to be in complete accord with the decisions come to upon the same topic by French tribunals. The appellant Lecouturier was extremely uncertain as to whether he had any right whatever under the legislation and decrees mentioned to trade-marks registered in foreign countries. On the 26th December 1905 he presented an application called "A Petition for Interpretation of Decision" of the order of the Court of Appeal of Grenoble of the 19th July 1905. Lecouturier states that the judgment and decisions vesting him in the Carthusian property "lack precision inasmuch as they do not indicate with sufficient clearness that the assets of the liquidation comprise not merely the trade-marks registered in France, but likewise the trade-marks registered in foreign countries," and he asked the Court "to pronounce and declare, by way of interpretation of its decision," that the latter trade-marks were included. The Court declined to grant the petition, narrating, among other things, that "It is not permissible for judges, under the pretext of interpreting their decisions, to make any modification therein or to add a fresh provision to them." The Court, "without taking into consideration the demand made by Lecouturier in his said capacity, declares it to be inadmissible," and condemned him in costs. It means that that decision left it free to Lecouturier to take such course as he might think fit, but in the course of the narrative a most significant commentary is made upon the law of the 1st July 1901 by the learned Judges. It is in these terms—"The liquidator's claim to the ownership of the trade-marks registered in foreign countries raises the question of whether the law of the 1st July 1901, which is an exceptional and police law, is operative or not outside the territory of the Republic." It is accordingly clear that when the English Courts are appealed to on the ground that the law of the Republic referred to effected a transfer of foreign trade-marks, that is done in face of a judicial declaration by high French authority that the law sought to be enforced abroad was an exceptional and police law. This has no remote bearing upon the general question, and confirms, in my opinion, the conclusion arrived at by your Lordships. I think it right further to add that what appears to me to have been very near to the question raised in this case has also been settled adversely to the respondents in the Courts of France. When the monks migrated to Spain and there set up the business according to their secret recipe, "La Union Agricola Sociedad Anonima" was formed for the purpose of conducting the trade, and the liqueurs manufactured in Spain were sold in bottles bearing the words "Les Pères Chartreux.' On the 18th May 1905 the Civil Tribunal of Grenoble pronounced judgment in a litigation upon this subject. That judgment narrates as follows:—"Whereas by application of the law of the 1st July the Grande Chartreuse mark may, indeed, have remained in the hands of the liquidator of the dissolved and expelled congregation, but the secrets or processes of manufacture were carried away by the Chartreuse monks as an indissoluble property seeing that a non-patented process remains unknown, and the mark was thus separated from the product whose origin it had until then guaranteed. Whereas this special situation resulting from new legislation brings into presence on the one hand the liquidator who sells under the old Grande Chartreuse mark a product which is not manufactured by the Chartreuse monks, and on the other hand the Chartreuse monks whose right to manufacture liqueurs according to their process Lecoutrier admits, while he wishes to prohibit them from using their name to characterise and distinguish the products manufactured by them. . . . . Whereas the mark is chiefly valuable through the product which it protects and not in itself without the product, although according

to our law, contrary to the legislation of other countries, the product and the mark are not indissolubly bound together." The finding of that Court was that the Union Agricola is entitled to use in its label the name "Pères Chartreux" in order to designate the manufacturers of the liqueur manufactured at Tarragona and that they have not committed the misdemeanour of usurpation of name. Nothing could be clearer in the result than that the liqueur manufactured by the monks at Tarragona according to the secret is, according to French judicial opinion, not interfered with by the law of the 1st July 1901, and that even the products of that manufacture can be sold in France with the name "Les Pères Chartreux." The French judges note the fact, which is in accordance with English law, that outside of France the business and the marks should go together. It is, accordingly, in conclusion, satisfactory to observe that the decision of your Lordships' House, far from being out of harmony with the lines of French procedure, whether judicial or legislative, appears to be in entire accord with its provisions and its limitation. I agree in thinking that the decision of the Court of Appeal ought to be sustained.

LORD CHANCELLOR (LOREBURN)—I have very few words to add. I agree with the judgment of the Court of Appeal. I desire to say that I do not think that any reflection rests upon the French judicial officer who is the appellant in this case. But this property—for property it is—which has come into question in this appeal is property situated in England and must be regulated and disposed of in accordance with the law of England. I am glad to think that in so holding we are not affirming anything inconsistent with the decision of the French courts, to which at all times we desire to pay the most becoming respect. The appeal must be dismissed with costs.

Appeal dismissed.

Counsel for Appellants—Sir R. B. Finlay, K.C. — Upjohn, K.C. — L. B. Sebastian. Agents — Steavenson & Couldwell, Solicitors.

Counsel for Respondents — P. O. Lawrence, K.C. — Younger, K.C. — Sargant. Agents — Hollams, Sons, Coward, & Hawskley, Solicitors.

PRIVY COUNCIL.

Friday, March 18, 1910.

(Present—The Right Hons. Lords Macnaghten, Atkinson, Collins, and Shaw.)

JONES *v.* NORTH VANCOUVER LAND AND IMPROVEMENT COMPANY.

(ON APPEAL FROM THE SUPREME COURT OF BRITISH COLUMBIA.)

Company—Forfeiture of Shares—Alleged Irregularity of Forfeiture—Director—Acquiescence.

J. was from 1891 to 1902 a director of a company in which shares were held nominally by J's wife but in reality in trust for J. Calls were made affecting these shares in 1892, 1895, and 1896, under penalty of forfeiture, but nothing was paid in respect of these by J. or his wife. At a meeting in 1898, at which J. was present, the shares were declared forfeited; he had also been present at the preceding call resolutions. In 1907 J. and his wife brought an action to have the forfeiture declared invalid on various grounds of alleged informality in the election of directors, the passing of the resolutions, and service of the call notices.

Held that in the circumstances neither J. or his wife could found on the alleged informalities.

An action was raised against a company to reduce the forfeiture of certain shares. The *circumstances* are stated *supra* in rubric, and in the considered judgment of their Lordships, which was delivered by

LORD ATKINSON—This is an appeal from the judgment of the Supreme Court of British Columbia, dated the 7th June 1909, affirming the judgment of the trial judge, Clement, J., who dismissed the action with costs. The suit, considering the relationship of the parties (they are husband and wife) and the conduct and action of the male plaintiff, is somewhat peculiar in its incidents. It was originally commenced on the 27th May 1907. The original statement of claim sets forth that the plaintiff Clara B. Jones was the wife of the plaintiff H. A. Jones, a real estate agent, both residing in the city of Vancouver, in the Province of British Columbia; that she had been since the 26th September 1893 owner of 240 shares of 100 dollars of the capital stock of the defendant company, for which their certificate, No. 237, dated the 26th September 1893, was issued; that she held these shares in trust for him, and had by assignment (dated the same 26th September, as it turns out) assigned all her estate and interest in the shares to him; and further alleged that the defendant company had wrongfully and illegally declared the shares to have been forfeited, and had persisted in so treating them, and claimed the following relief—(1) That it might be declared that the shares had not been forfeited; and (2) that the plaintiff