

assignment of trade-mark from Clarence deForest had not been registered, and there was no specific assignment to the company which could conveniently if at all be used for registry under the Trade-mark Act. The plaintiff thereupon applied to the defendant to execute a transfer, not only in order to carry out his intentions as to the property, but also his covenant to execute such further conveyances as might be necessary for the completion of the title. This the defendant refused to do for a reason so altogether insufficient that it is not worth discussing. The plaintiff then brought this action to compel the defendant to execute the necessary assignment.

Assuming the trade-mark to be assignable, it passed I think under the assignment from the defendant to the company. The words used are in my opinion amply comprehensive to pass the trade-mark and thus carry out what was beyond all doubt intended by the defendant as by everyone who had anything to do with the transaction. *Gage v. Canada Publishing Company*, 6 Ont. Rep. 68, 11 Ont. App. 402, 11 S. C. R. 306. In *Lecouturier v. Rey*, 1910, App. Cas. at p. 273, the Lord Chancellor treated the trade-mark as property situated in England, and therefore regulated in accordance with the law of England. The object of organizing the company was to transfer the assets and business of the defendant to the company, so that the business should be continued and carried on by it. That is what in fact was done. It would be a strained construction of the conveyance to hold that under such circumstances such words as "assets," "property" and "good-will" did not include the principal asset of the whole business. Without it the business could not be continued or carried on as before. It is in that way quite within the rule mentioned by Fry, L.J., in *Pinto v. Badman*, 8 R. P. C. 181, mentioned in the case I have just cited. He says: "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 Cranmouth's language, the manufactory of the goods on which the mark has been used to be affixed." Viewed as a question between the defendant and the creditors of the company in which he held nearly all of the subscribed shares, which he had himself organized and promoted for the purpose of taking over and continuing the business, and to which he had made the assignment I have already referred to, it seems difficult to suggest any good reason for his refusing to perfect the title to the trade-mark as he has been requested to do. It seems to have been regarded by him as the most valuable part of the assets; he had received a large sum for