

Mr. FRASER: The Peterboro canoe has been in existence for years.

The WITNESS: It would seem quite proper that it should be registered as applying to canoes, but that ought not to prevent anybody else saying "this is Joe Doakes' canoe made in Peterboro, Ontario." And that is what we have tried to do in this bill.

Under the old Trade Mark and Design Act, there was a procedure—you will not find it in the statute book—but it was prior to the early 1920's—by means of which you went to the Exchequer Court and, under its inherent jurisdiction the court could make an order for registration of a descriptive word. Then in the early 1920's that was changed, and the jurisdiction was vested in the trade marks office under the authority of the Trade Mark and Design Act whereby you could adduce proof of long continued use as establishing secondary meaning, and you could get on the register these descriptive words or surnames.

But in 1932 that was changed and now, under the Unfair Competition Act, section 29, proof is required to be adduced before the Exchequer Court. We have seen fit to recommend that the procedure obtaining before 1932 be restored and that this proof be adduced before the registrar rather than before the court. We have had many representations both ways. Some feel that, in extracting words from the public domain and getting, in a sense, a monopoly privilege in respect of descriptive words, surnames or geographical words, it is only a court that ought to take the responsibility of making an order of that type. As against that, we did recognize that it was not right to put traders and commercial men to the expense of the full procedure before the court. The registrar, in trade mark matters, has departmental counsel to advise him, and the registrar is fitted to handle these matters himself, and there is always appeal from his decision to the Exchequer Court if anybody so desires.

*By Mr. Jeffery:*

Q. Is there any limit of time on that appeal?—A. There is a time limit for that, as Mr. Stein (Under Secretary of State) has indicated. Further, we now, for the first time, provide a procedure by way of opposition to registration, so that, taking everything into account, it has seemed to us that simplification of the procedure and the cutting down of expense by vesting this jurisdiction in the registrar is proper, rather than having the necessity of going, to the Exchequer Court.

Q. What about the opposition. Who are notified?—A. Everybody.

The CHAIRMAN: By what form of advertising are the public informed.

The WITNESS: I am going to ask one of my colleagues to speak on that if you want it now.

*By Mr. Richard:*

Q. Before that perhaps you could tell us under this new procedure—I suppose that it would not be just because a proposed mark, or because a mark was used for a short time. Would there not be a time set wherein the applicant has used that trade mark for at least so many years before he can apply to the registrar to register it, that is a mark that is descriptive, geographical, or a surname. It would have to have a certain amount of established use. A. Yes, but it cannot obviously apply to a proposed trade mark that has never been used; it must be in relation to a mark that has been used and has been used for such a long time that it has acquired this distinctive character. Now, you ask if any time limit is set. The answer is no, and we think it would be very unwise to endeavour to set a limit, because some marks would obtain this secondary meaning much more slowly than others. There might be a mark, for example, that had been used for thirty years and it really had never acquired this