

entries on the register, and even to entertain actions for injunctions or damages for infringement, do not extend or enlarge, or assume to extend or enlarge, the effect of registration or the certificate thereof. The certificate is still only *prima facie* evidence of the facts stated therein, and there is nothing in the legislation depriving a defendant of the right to shew that the facts were not truly stated, and that in truth there were no good or valid grounds for registering the alleged trade mark. This may lead to the somewhat anomalous result that a Provincial Court, in an action for infringement, may decide as to the validity of a trade mark in one way, while the Exchequer Court, on an application to expunge or rectify the register, may decide the contrary. But if the proprietor chooses to invoke the aid of the Provincial Court, instead of resorting, as he may do in the first instance, to the Exchequer Court, the defendant is entitled to the judgment of the tribunal upon the question of the plaintiff's title if he desires to raise it. The Exchequer Court is not expressly given exclusive original jurisdiction in regard to the classes of cases enumerated in sec. 4, but by sec. 5 it is given exclusive jurisdiction in cases of claims to public lands. I think, therefore, that it was open to the defendants in this case to impeach the plaintiffs' right to the trade mark which they put forward as the foundation of the action.

But, with much deference, I am unable to agree with the learned Chief Justice's conclusion against the trade mark. I agree that under our law, as under the English law, a merely descriptive word or name, that is, a word or name which merely denotes the goods or articles, or some quality attributed to them, is not capable of acquisition or proprietorship as a trade mark. But I fail to see how the three letters claimed by plaintiffs fall within this category. By themselves they do not describe any kind or quality of goods or articles. And they could only acquire any significance in the trade or upon the market by being so applied or attached to goods for sale in the market, as to distinguish them from similar goods, and to identify them with a particular manufacturer or trader, as made, produced, or sold by him: Kerly on Trade Marks, 2nd ed., p. 24. And if these letters have been shewn to fall within the definition, they were capable of registration as a trade mark under sec. 2 of R. S. C. ch. 63. The words of this section are much more general than the definition of trade mark under the Imperial Acts; and the decisions of the English Courts since 1875, except in respect of cases falling within the provisions of sec. 64 (3), (11),