hearing notice of which was given to all property owners and occupiers within the proposed area and by advertisement to the municipal taxpayers at large.
2. No owner or occupant could be forced to deliver up possession until a reasonable time, say three months, after compensation has been determined and paid.
3. Compensation must be on a replacement or, as it is sometimes called, "a house for house" basis and must include complete indemnification for loss of income, moving expenses, business interruption and, if the award by the Public Utilities Board or the Appellate Division is greater than the offer made by the municipality, complete indemnification for the costs of expert witnesses and counsel.
4. The prime objective must be renewal by way of rehabilitation or renovation, and there can only be wholesale destruction as a last resort and then only if more than 50 per cent of the structures in the proposed area are uninhabitable or unusable and beyond rehabilitation.

These suggested changes in the legislation would remedy only the most glaring inequities. There are no doubt many other changes which could be and should be made in the interests of natural justice.

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FOREIGN CORPORATIONS—ABILITY TO SUE AND TO BE SUED IN ALBERTA.

Despite the number of foreign corporations carrying on business in the Province of Alberta, the law on the ability of such corporations to sue and be sued is unfortunately marred by aspects of uncertainty and harshness which may work hardship on both foreign corporations and residents of the Province doing business with such corporations. It is proposed that a short review of the authorities be attempted, to the end of summarizing those issues which are settled and indicating, with suggestions for resolution, those points on which ambiguity or deserved dissatisfaction remains.

I. THE RIGHT OF A FOREIGN CORPORATION TO SUE

It is a basic principle of private international law that the right of a person to sue is conferred by the law of the jurisdiction in which the suit is brought. This principle applies to corporations as well as to natural persons: *C.P.R.* v. *Western Union Telegraph Co.*[1] The result is that in most cases one must look to the law of the Province in which suit is desired. The chief exception is an action in the Exchequer Court, which admits suit by a foreign corporation, wherever registered, on matters within its jurisdiction.

Unfortunately, there is little uniformity in the requirements of the various provinces for suit by a foreign company.

The Alberta Companies Act[2] provides that all foreign companies carrying on business in the Province must be registered there. Section 161(1) further provides that a company which under section 147(1) ought to be registered may not while unregistered commence or maintain an action. Thus, generally speaking, it would seem that to bring an action in Alberta, a foreign corporation must be registered here.

1 (1889), 17 S.C.R. 151.
2 R.S.A. 1955, c. 53, s. 147(1).

However, the possibility that in certain circumstances an unregistered foreign company could bring suit in Alberta remains. The first such situation is where the transactions of the Company in the Province are not within the ordinary business of the corporation. Section 147 of the Alberta Companies Act states that any company carrying on business in the province must be registered and section 161 states that without such registration no such company may bring suit in Alberta. Thus the necessity for registration as a prerequisite to bringing an action is ultimately dependent on whether the corporation is carrying on business in the province.

In provinces other than Alberta, and at one time in that Province, "carrying on business" was defined by case law as requiring a fixed place of business, an agent or property in the Province in which the alleged business was done.[3] However, the definition in section 146 (b) of "carrying on business" appears to considerably broaden the ambit of the phrase by explicitly excluding the test of whether the corporation has an agent or office resident in the Province:

> To "carry on business" means to transact any of the ordinary business of a foreign company whether by means of an employee or an agent and whether or not the company has a resident agent or representative or a warehouse, office or place of business in the Province.

The only possibility of bringing suit without registration under this definition is in the case of a transaction not within the ordinary business of the foreign company. As there are no reported cases on point, the Court's probable interpretation of "ordinary business" remains open to speculation. It is submitted that the better approach would be that taken by the Tax Appeal Board and the Exchequer Court in deciding what a company's ordinary business is for the purpose of deciding questions of capital gain, namely that a company's ordinary business is to be decided mainly by its past and present activities, and only where these afford no clear answer, by reference to its objects of incorporation.[4]

It should be noted that, in itself, bringing an action is not carrying on business:[5] Thus if not otherwise caught by the definition of "carrying on business" in section 146 (b) of the Alberta Companies Act, an unregistered foreign company may bring an action in Alberta.

It is by now apparent that the possibility of a foreign corporation not carrying on its ordinary business in the Province, and hence the possibility of its bringing an action while unregistered, is remote. What alternate remedies are available to the unregistered foreign corporation in this predicament? One device which has been used is registration for the purpose of suit. Section 16 of the Alberta Companies Act only says that no company which ought to be registered can commence or maintain an action while unregistered; *prima facie*, registration after the transaction on which the suit is sought but before the suit itself does not violate this provision.

In Manitoba it has been held that a foreign company may register after the transaction on which the action was based for purposes of

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[3] *Halifax v. McLaughlin Carriage Co.* (1907), 39 S.C.R. 174; *John Deere Plow Co. v. Agnew* (1913), 24 W.L.R. 221; 4 W.W.R. 277; 48 S.C.R. 208; 10 D.L.R. 576; *Standard Fashion Co. v. McLeod* (1914), 6 W.W.R. 939; 7 Alta. L.R. 45; 17 D.L.R. 403.

[4] *M.N.R. v. Sutton Lumber & Trading Co. Ltd.* (1953), 4 D.L.R. 801; 53 D.T.C. 1158; *M.N.R. v. Glengate Investments Ltd.* (1963), 31 Tax A.B.C. 369; 63 D.T.C. 322.

[5] *Charles H. Lilly Co. v. Johnston Fisheries Co.* (1909), 10 W.L.R. 2; 14 B.C.R. 174; *Northwest Trading Co. v. Northwest Trading Co.* (1920), 3 W.W.R. 729; *Michelson Shapiro Co. v. Michelson Drug & Chemical Co.* (1916), 10 W.W.R. 155; 28 D.L.R. 307.

suit: *Hickman, Williams and Co.* v. *J. L. Kerr & Sons Ltd.*[6] However, this case is distinguishable on the ground that the Manitoba legislation at that time specifically provided that proceedings might be brought on restoration of the licence and registration. Similarly, an Alberta case, *Slater Shoe Co.* v. *Burdette*,[7] which allowed registration for the purpose of bringing an action may be distinguished on the basis of the reference in the Act at that time to only "maintaining" an action rather than the present "commence or maintain."

Where legislation provides that a company carrying on business must be licensed and cannot otherwise commence and maintain an action, and does not specifically allow registration for the purpose of bringing an action, as is the case in Alberta, it would seem that the manoeuvre of subsequent licensing will not be helpful. In *Calgary Brewing Co.* v. *Jarvis*,[8] a British Columbia Court reasoned that the transaction done while the company was unregistered was illegal, and that the obtaining of a licence subsequently would not give it a right of action in respect of anything done illegally. In view of the lack of Alberta authority in point, it seems likely that the view of the B.C. County Court would be accepted, with the result that licensing for the purpose of bringing an action would not be of aid, except in the case where a company, properly licensed at the time of the transaction on which action is based, has subsequently allowed its licence to lapse.

The same reasoning, if adopted, would clear up another ambiguity in the Alberta Companies Act. The reference to "carrying on business" in section 147 is in the present tense, allowing speculation about whether, in the case of a foreign company going out of business in the province, it might bring an action on past dealings even though never registered. If such acts are to be regarded as illegal and incapable of being retroactively corrected, such an action would clearly not be possible.

A further possibility for the unregistered foreign company is appointment of an agent for the purpose of bringing an action. This has apparently been attempted with success in Alberta. The defenses of an assignment for no value might be countered for the sole purpose of getting around the Alberta Companies Act by the presumptions that one should have his day in Court and that formalities should not obstruct the right to be heard.

Finally, if the country or province in which the foreign company was incorporated is one with which Alberta has an arrangement for the Reciprocal Enforcement of Judgments, and if the contract, as may be the case where the transaction was by mail, was formed in that country, the foreign company may bring an action in its own jurisdiction and then seek to have any resulting judgment enforced in Alberta.

Before leaving the question of the right of a foreign corporation to sue, two points of practice merit mention. The former rule that the defense must raise a foreign company's inability to sue because of lack of registration seems to be altered by section 16(2) of the Alberta Companies Act which provides that in any action or proceedings, the

[6] (1954), 19 W.W.R. (N.S.) 634.
[7] (1913), 5 W.W.R. 583; 26 W.L.R. 109; 14 D.L.R. 519.
[8] (1911), 18 W.L.R. 474.

burden of showing that it is registered is upon the company. However, such a defect is not grounds for setting aside a default judgment:[9]

While certain points of practice may favour the unregistered company, the strict substantive provisions of the Alberta Companies Act militate harshly against those foreign companies which, because of rare, sporadic or exclusively mail-order contracts in the province, fail to register. The hardship is the greater because in most jurisdictions registration is not required where the foreign company has no place of business and no agent in the jurisdiction, leading foreign companies to assume the same is the case in Alberta.

II. SUING THE FOREIGN CORPORATION

Alberta law permits suit where the action arose out of an occurrence within the Province or where the proposed defendant is resident in the Province. The English Courts have long assumed jurisdiction over foreign individuals who commit wrongs or incur obligations in the country. *Newby* v. *Von Oppen et al*,[10] applied the common law rules which gave the courts jurisdiction over foreign individuals and foreign companies, holding that a foreign corporation, carrying on business in England, although not incorporated according to English law, may be sued as defendants in an English Court in respect of a cause of action which arose within the jurisdiction.

The decision in *Newby* v. *Von Oppen* was based on the reasoning that since foreign corporations were allowed to bring an action in England, they should also be capable of being sued. This might cast doubt on the liability of the unregistered company carrying on business in Alberta to be sued; it might be argued that such a company could not bring an action in Alberta, and therefore should not be capable of being sued. This may have been one of the doubts of Ford, J. A., in the Alberta Court of Appeal, in the case of *Alberta Pulpwood Exporting Co.* v. *Falls Paper and Power Co.*,[11] where he discredited the applicability of *Newby* v. *Van Oppen* to Alberta and suggested that not only the mode of service, but the question of whether "the defendant corporation, an unregistered corporation was amenable to the jurisdiction of the Supreme Court of Alberta" was doubtful.

Even if the foregoing difficulty is avoided by registration or waived, the Court has no jurisdiction until the Company has been properly served. *Newby* v. *Von Oppen* established that before a corporation can be served in the jurisdiction, it must be shown to be resident there. "Residence" thus used has a different meaning from the residence of a corporation for purposes of determining tax liability. While for the purpose of tax liability residence is determined by the place where central control and management is exercised and dual residence is extremely difficult to establish, "residence" used in the context of service on a foreign company is established by carrying on business which is controlled to some extent by agents in the province. Several cases indicate that the business must have been continued for a substantial period of time, and have been done at a fixed place in the jurisdiction:[12] Thus, an isolated

[9] *Western Canadian Ranching Co.* v. *Begg*, [1919] 2 W.W.R. 861 (Alta. D.C.); *J. R. Watkins Co.* v. *Thale* [1924] 3 W.W.R. 847 (Sask. K.B.).
[10] (1872), L.R. 7 Q.B. 293; 41 L.J.Q.B. 148.
[11] (1954), 13 W.W.R. (N.S.) 536, 539.
[12] *Ingersoll Packing Co. Ltd.* v. *New York Central & Hudson River Railroad Co.* (1918), 42 O.L.R. 330, 337; *Higgins* v. *Champlain Coach Lines Inc.* [1953] O.W.N. 679.

transaction is not enough to bring the rule into play.[13] Moreover, the agent must have been carrying on business at the time of service, and must have some authority independent of the office in the foreign country.[14]

However, the foregoing line of authority, stemming from *Newby* v. *Von Oppen,* has been questioned. In *Droeske* v. *Champlain Coach Lines Inc.*,[15] service on a foreign company through an agent definitely not carrying on business in the sense required by these authorities was accepted. More significantly, in *Alberta Pulpwood Exporting Co.* v. *Falls Paper and Power Co.*[16] Ford, J. A., described the law in this area as in a state of flux, and discredited the applicability of *Newby* v. *Von Oppen* on the ground that it was based on the English rules for service which are quite different from the Alberta rules. He suggested that the Alberta Rules of Court for the service of foreign corporations[17] should be the sole consideration in determing the validity of service. These rules merely demand service on the agent of a corporation, without further qualifications as to registration or residence. Such a view is consonant with the view of Egbert, J., at trial in the *Alberta Pulpwood Exporting Co. Case.*[18] However, it is necessary to conclude that the law on the conditions under which a foreign corporation may be served within the jurisdiction is unsettled. Where doubt remains, the safest practice may be to serve an officer clearly responsible outside the jurisdiction: *Crawford* v. *Calville Ranching Co.*[19]

Two additional points should be noted with respect to service of a foreign company. First, the plaintiff is entitled to make all the necessary inquiries in order to determine whether a foreign company has a fixed place of business in the jurisdiction: *Alberta Pulpwood Exporting Co.* v. *Falls Paper and Power Co.* Secondly, the mere fact of registry does not mean the company carries on business in the province of registry.

It is to be hoped that future judicial decisions provide answers to some of the unresolved questions relating to actions by and against foreign companies and, hopefully, some alleviation of the unusal strictness of the Alberta law in this regard.

BEVERLY MCLACHLIN*

13 *Apel* v. *Anchor Insurance & Investment Corp.* (1921), 21 O.W.N. 25, 27; *Murphy* v. *Phoenix Bridge Co.* (1899), 18 P.R. 495.
14 *Murphy* v. *Phoenix Bridge Co., ibid.*
15 [1939] O.R. 560.
16 *Supra,* n. 11, at 539.
17 Now Supreme Court Rules, 15(2), 20.
18 (1954) 11 W.W.R. (N.S.) 97.
19 (1912) 22 W.L.R. 50; 2 W.W.R. 926; 6 D.L.R. 375.
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GUARDIANSHIP—WILLS—THE INFANT MOTHER WHO HAS NEVER BEEN MARRIED AND WISHES TO PROVIDE FOR HER ILLEGITIMATE CHILD.

Aristotle said that democracy arose from men thinking that if they are equal in any respect they are equal in all respects. And Thomas Jefferson stressed "We hold these truths to be self-evident: that all men are created equal." But the illegitimate child whose previously-unmarried mother dies while under the age of 21 years would be justified to question whether all men are created equal.