UNREPORTED PRACTICE CASES

FOREIGN CORPORATION—CONTRACT IN JURISDICTION—STAY*

Plaintiff was a B.C. company invited by defendant to undertake some work in a feasibility study respecting mining property in arbitration. One meeting preliminary to making an agreement was held, in Alberta, but final authority to proceed was communicated to the plaintiff in B.C. The work was completed in Vancouver.

The defendant applied to set aside the Statement of Claim before defence, relying on Rule 27 and seeking to set aside the Statement of Claim under Part 8 of the Companies Act. Under s.179 of the Companies Act, an unregistered company is incapable of commencing or maintaining an action in respect of a contract "made in whole or in part in the province".

The learned Master held that the plaintiff was not carrying on business, since all it ever did in Alberta was have a representative attend to discuss an arrangement by which work might be done in Australia and Vancouver, and the terms of that arrangement were not finally settled in Alberta.

The learned Master went on to point out that a contract can be negotiated, discussed or considered in whole or in part in the province, but the idea of a contract being made in "part" is elusive. The "contract making process" may occur in whole or in part, but there is no contract until the process is completed. The term can only sensibly be interpreted as meaning a "contract made in the province". The learned Master declined to follow *Brewster, Leeds* v. *Waldman & Stone* (1953) 8 W.W.R. 710. He referred to *Hickman* v. *J. L. Kerr & Son* (1954) 13 W.W.R. 634, where Freedman J. followed the previous case because it was binding on him. The Master has not so found.

The application was dismissed. Had it been granted, the Master would have stayed the action for a reasonable time to permit registration: *Ben Ginter Construction Co.* v. *Primary Construction* (1969) 68 W.W.R. 89; *United Agencies* v. *Winnipeg Graphic Art Engravers* (1961) 34 W.W.R. 49.

(*Chapman, Wood & Griswold Ltd.* v. *Pacific Copper Mines Ltd.*, S.C.A., J.D.E., S.C. No. 77584, April 3, 1973, L. D. Hyndman, Q.C., Master in Chambers.)

* Unreported Practice Case edited by Professor W. E. Stevenson, Faculty of Law, The University of Alberta, Edmonton.