

An action was commenced in October, 1914, by what is called a specially endorsed writ, to recover the sum of £5,605. The writ was issued by the company's solicitor on the instructions of the secretary. Under this procedure, the plaintiffs are entitled to obtain summary judgment unless the defendants can shew that, *primâ facie*, they have a right to defend. The defendants asked for leave to defend on the grounds (1) that the company was in fact an alien company with whom it was illegal, without a license from the Crown, to hold any commercial intercourse, which included the payment of money for a trade debt; and (2) that the secretary had no authority either to instruct the company's solicitors to issue the writ in the action or to give a receipt for the money when recovered.

It will be seen that the Court was not bound to decide whether the plaintiff company was entitled to sue; a decision that the secretary had no authority, or that the defendant had a *primâ facie* right to defend, would suffice. The Court might refrain from settling the main and most interesting question. In the House of Lords, all the Lords were of opinion that the secretary had no authority *virtute officii* to commence actions on behalf of his company, and that, on the facts, he had no authority from the directors. That was quite enough to decide the case. The majority of the Court of Appeal and five members of the House of Lords were of opinion that it was a case which ought to be investigated, and not one for summary judgment. It remained for two very distinguished lawyers to pronounce certain *obiter dicta* to the effect that the plaintiff company as an illegal association ought not to be allowed to sue.

In the Court of Appeal, Lord Justice Buckley (as he then was), differing on this point from all his learned brethren, held that in the circumstances the company was an alien enemy, and could not sue in the King's Courts.

No less an authority than Lord Halsbury took the same view in the House of Lords. But the net result of the whole litigation is that the case "went off" on a mere side issue, and the main question is still undecided. At the same time the opinion