

Adopting the principle which is applied to individuals that "enemy character" is the criterion of suing capacity—not enemy origin or nationality—it is hard to see why there should have been any difference of opinion about the right of a duly constituted English company, trading and having its registered office in this country, merely because some or all of its constituent members were aliens. It is scarcely consistent with the unanimous judgment of the full Court to hold that a company domiciled here may not maintain an action, because of its constituents, though each of those constituents, if so domiciled, would have a right to sue notwithstanding his alien, but not "alien enemy" character. Five out of the six Judges who heard the appeals in the *Continental Tyre Company's* cases declined to draw the suggested distinction between natural and legal persons, and it is odd that the single dissident was just the most technically-minded of them all. Lord Justice Buckley, regarding the important question at issue as one of relative friendliness or enmity, and holding as essential the capacity to pay allegiance to the King, "which could not be predicated of a mere legal entity," refused to recognize the company's rights because of its alien constituents. The view of the learned Lord Justice that such a company should not be allowed to recover the debts due to it (though no funds collected could be transmitted abroad) was obviously based on considerations of public policy, for he maintained that even if his judgment were wrong, as it presumably was, the matter was one which called for urgent legislation. "Public policy," it has been said, "is an unruly horse and dangerous to ride—when once you get astride it you never know where it will carry you"; and one of the more careful of the Judges, commenting on this text, roundly declared that "Judges are more to be trusted as interpreters of the law than as expounders of what is called public policy." The majority of the Court were mindful of this dictum, observing that nothing could more easily tend to create uncertainty and confusion in the law than to allow considerations of public policy, as distinguished from law based upon public policy—a very acute and just distinction—to be a ground of judicial decision.