

The present motion is to continue that injunction. The plaintiff claims to sue on behalf of himself and all other creditors of the firm already named, and grounds his action upon the fact that the seizure and sale will, in his belief, "create an unjust preference."

The plaintiff by so suing must be taken to have abandoned his rights as a secured creditor. Insolvency is not suggested except inferentially, and apparently will only arise after the defendants have realised upon their security.

I do not understand upon what principle a simple contract creditor, even suing in a class action, can restrain a chattel mortgagee from realising upon his security, unless he in the first place alleges more than this plaintiff does, and in the second place satisfies the Court that the circumstances under which the mortgage was given indicate some infraction of the statutes relating to preferences. This the plaintiff does not attempt to do.

So far as the amount due upon the mortgage is concerned, the Court will not, upon this application, take the account, nor, as I understand the practice, will it restrain realisation by a solvent creditor under his mortgage, except upon at all events *prima facie* proof of invalidity. I am, therefore, unable to continue the injunction.

The defendants, however, contended that the action is not maintainable and that I should dismiss it, because the plaintiff is an alien enemy, being an Austrian and not naturalised. The plaintiff does not deny that he is a native of Austria, and by his counsel admits that he is not naturalised. The writ was issued on the 27th August, 1914, which was after the date at which a state of war existed between his Britannic Majesty and the Emperor of Austro-Hungary, viz., the 12th August, 1914.

This raises a most important point, of which the Court is bound to take notice: per Lord Davey in *Janson v. Dreifontein Consolidated Mines Limited*, [1902] A.C. 484, at p. 499. The position of an alien enemy has not, except in a few isolated cases, been dealt with in the Courts since the Napoleonic and Crimean wars. The doctrines then established have not, in consequence, undergone much, if any, modification. But, if not altered in substance, the extreme rights arising thereout are rarely—according to Lord Loreburn in *De Jager v. Attorney-General for Natal*, [1907] A.C. 326—put into actual practice.

An alien enemy is one whose Sovereign is at enmity with the Crown of England, and one of his disabilities which has always been strongly insisted upon is that he cannot sue in a British