

all the means and appliances of defence''; and he quotes the passage from Bacon's Abridgment which I have already cited.

Fortified by the passage from the abridgment and by these American decisions and by my view of the reason for the rule, which forbids an alien enemy to sue, I am of opinion that the rule is confined to cases in which the alien enemy is plaintiff, and that war does not suspend an action against a defendant alien enemy.

The next question is, Can he appear and defend either personally or by counsel? I think he certainly can. To allow an action against an alien enemy to proceed and to refuse to allow him to appear and defend himself would be opposed to the fundamental principle of justice. No state of war could, in my view, demand or justify the condemnation by a Civil Court of a man unheard. The point came before the Supreme Court of the United States in the case just cited. The District Court had allowed an action to proceed against an alien enemy, but had struck out his claim and answer. Mr. Justice Swayne deals with the matter in these words: "The order in effect denied the respondent a hearing. It is alleged that he was in the position of an alien enemy, and hence could have no locus standi in that forum. If assailed there, he would defend there. The liability and the right are inseparable. A different result would be a blot upon our jurisprudence and civilization. We cannot hesitate or doubt on the subject. It would be contrary to the first principles of the social compact and of the right administration of justice." I desire to adopt the language of the learned judge as my own, except that I am not such a convinced disciple of Rousseau as to be able to base my opinion upon the principles of the social compact to which Mr. Justice Swayne refers.

I have come to the conclusion that there is no rule of the common law which suspends an action in which an alien enemy is defendant, and no rule of the common law which prevents his appearing and conducting his defence.

In this case I understand that the presence of the alien enemy in this country at the trial is not necessary and is not con-