

other creditors ought not to be permitted to take the dividends accruing upon this debt; for the Crown will be entitled;" and see 19 E. 4, 6, where it is said by Brian, though a debt be void against the party, the King shall have it; and Lord Eldon, in giving judgment, remarks: "If this had been a debt arising from a contract with an alien enemy, it could not possibly stand; for the contract would be void. But if the two nations were at peace at the date of the contract, from the time of war taking place the creditor could not sue; and the contract being originally good, upon the return of peace the right would survive. It would be contrary to justice, therefore, to confiscate the dividend. Though the right to recover is suspended, there is no reason why the fund should be divided among the creditors." His judgment, therefore, was, "Let the claim be entered; and the dividend be reserved."

In *Rex v. Depardo*, 1 Taunt. 28 it was said by Lord Mansfield, C.J.: "If the Crown did not enforce a contract to which an alien enemy was entitled, the prisoner (an alien enemy) might enforce it after the conclusion of a peace." There is also a dictum of Lord Ellenborough, in *Harmer v. Kingston*, 3 Camp. 153, that where persons interested in the subject of an action become alien enemies, "that only goes to suspend the remedy." So also Story says: "The rights of an alien to sue in the Courts of a foreign country upon a contract made during peace, are suspended during war, but they revive upon the recurrence of peace": Story Con. Laws, s. 19, citing *Houriet v. Morris*, 3 Camp. 303, but the case does not seem to bear out the text.

It is possible that the statements above quoted may be harmonized in this way, viz., that, where the cause of action is alleged to have arisen after a state of war existed, in that case the objection of alien enemy is a bar to the action; but where it arose before war, then the objection is in abatement and in the nature of a dilatory plea, the right of action being merely suspended during the continuance of the war.

But if the true principle why an alien enemy cannot sue in the King's Courts is because his rights are forfeited to the Crown, as stated in Bacon's Ab., *supra*, then, as the forfeiture would