

said, owing to the outbreak of hostilities in August, 1914, no return had been made.

The learned Registrar had followed *Dumenko v. Swift Canadian Co. Limited* (1914), 32 O.L.R. 87, and *Le Bret v. Papillon* (1804), 4 East 502; but, the Chancellor said, owing to conflicting earlier English decisions, the uncertain state of the practice, and the distinctive facts of this case, he was not bound to follow or extend the *Dumenko* case. A clear line of distinction was to be marked as to cases where the alien plaintiff was rightly in Court and had a vested right of action as an alien friend before that character had been transformed by war to that of an alien enemy.

The learned Chancellor distinguished *Le Bret v. Papillon* and *Brandon v. Nesbitt* (1794), 6 T.R.23. He referred to and relied on *Shepeler v. Durant* (1854), 14 C.B. 582, 583; *Porter v. Freudenberg*, [1915] 1 K.B. 857, 866, 873, 877, 880, 884; *Harman v. Kingston* (1811), 2 Camp. 150; *Flindt v. Waters* (1812), 15 East 260.

Dilatory pleas having become obsolete and being abolished in this country, the convenient remedy now applicable is a stay of proceedings under sec. 16(f) of the Judicature Act, R.S.O. 1914 ch. 56, "either generally or so far as may be necessary for the purposes of justice."

He also referred to *Bullen & Leake's Precedents*, 7th ed. (1915), p. 496; *Daniell's Chancery Practice*, 8th ed. (1914), vol. 1, p. 83; *Trotter's Law of Contract during War*, 1914, p. 54, and supplement of 1915, p. 66; *Craig Line Steamship Co. Limited v. North British Storage Co.*, [1914] 2 Scots L.T. 326; *Orenstein & Koppel v. Egyptian Phosphate Co. Limited*, [1914] 2 Scots L.T. 293, 297; *De Kozarijouw v. B. & A. Asbestos Co.* (1914), 16 Q.P.R. 213, 218; *Levine v. Taylor* (1815), 12 Mass. 7, 9, 10; *Hutchinson v. Brock* (1814), 11 Mass. 119; *Law Quarterly Review*, vol. 31, p. 167 (April, 1915).

So long as the plaintiff remained quiescent during the war, no order to stay proceedings till the close of the war was really needed. If the plaintiff ventured to make any move in the case, it was at her own risk. Should any intervention of the Court be asked, it is not to be by way of dismissal (when everything is tied up by the war), but, at most, by way of staying proceedings till the termination of the war, and this without costs, or, as in the *Scottish* case, with costs reserved.

The present appeal should succeed, and, owing to the state of the authorities, with costs to the plaintiff in any event; and it