

"The third rule is that, if a loss has taken place before the commencement of hostilities, the right of action on a policy of insurance by which the goods were insured is suspended during the continuance of war and revived on the restoration of peace."

If this is a correct expression of the rule, it covers by its terms the case of an alien enemy defendant as well as an alien enemy plaintiff. It is not the decision of the House of Lords in that case, and is not therefore binding upon me, although, of course, it is a statement of the law entitled to great weight. In that case, however, the point did not arise for decision; moreover, the alien enemy there was the plaintiff and the British subject was the defendant, and I doubt whether Lord Davey contemplated the converse case. I observe that other members of the House, who took part in that decision, confine themselves to the statement that an alien enemy cannot sue while the war lasts. (See Lord Halsbury, p. 493; Lord Lindley at pp. 509 and 510.) In the 7th edition of Bacon's Abridgment, vol. 1. at p. 183, the law is thus stated:—

"The plea of alien enemy is a bar to a bill for relief in equity, as well as to an action at law; but it would seem not sustainable to a mere bill for discovery: for, as an alien may be sued at law, and may have process to compel the appearance of his witnesses, so he may have the benefit of a discovery."

The statement of the rule by Lord Davey seems to me to be expressed in too wide terms. Mr. Raeburn, for the plaintiffs, was good enough to refer me to several American authorities. The law there appears to be clear that an alien enemy may be sued during the continuance of hostilities. There is an elaborate judgment of the Supreme Court of Missouri to that effect in *De Jarnette v. De Giverville*, 56 Missouri Reports 440, and in the case before the Supreme Court of the United States, *McVeigh v. United States*, 11 Wallace Reports 259. At page 267, Mr. Justice Swayne, in delivering the unanimous judgment of the court, says: "Whatever may be the extent of the disability of an alien enemy to sue in the courts of the hostile country, it is clear that he is liable to be sued, and this carries with it the right to sue