

necessity), and the opinion of Lord Coke, in his Com. Sur. Lit., p. 130 *b*, is that if any alien friend bring action, that ought to be pleaded in disability of the person and not of the writ. *But if he be an alien enemy the defendant may conclude to the action.* Doct. Placit. 9. We have italicized the last words, from them it appears that, according to Lord Coke and the author of the Doct. Placit., the plea of alien enemy is not a mere dilatory plea, but a plea in bar of the action.

In Bacon's Ab.—Tit. Abatement N. it is also laid down that "Alienage can only be pleaded in abatement to an alien in league, *but may be pleaded in bar to an alien enemy, because the cause of action is forfeited to the King as a reprisal for the damage committed by the dominion in enmity.*" And in Rolles' Ab. 195 it is said, "Le Roy ces avera": 19 E. 4, 6. But the note in Rolles is followed by "Mes quære," and in the annotation to Bacon's Abridgement, Aliens (E), note *a*, it is said: "Where the plaintiff is an alien enemy at the time of the cause of action arising, this may be given in evidence on the general issue, *or pleaded in bar*; but when he became so subsequently to the accruing of the cause of action it only goes to his disability to sue and must be pleaded in abatement: Doug. 649, note 132; 6 Term. R. 24; 15 East 260; 3 Camp. 152; and it is said: "The plea of alien enemy is a *bar* to a bill for relief in equity, as well to an action at law" Bacon's Abridg. Aliens (D.) 183.

The reason for the above distinction would appear to be this, that, where the plaintiff is an alien enemy at the time of the alleged cause of action arising, he is in fact unable to acquire any right, and therefore the defence of alien enemy is a bar, but where he becomes so subsequently according to modern law his right of action is merely suspended because "On the restoration of peace, one lately an enemy may sue for rights acquired when in amity": 6 T.R. 28, 1 Taunt. 29. And in bankruptcy, therefore, an alien enemy will be admitted, reserving the dividend: 13 Ves. 71." Com. Dig. Alien (C) 5 note. The case referred to in Vesey is *Re Boussmaker* 13 Ves. 71. That was an application by an alien enemy to be admitted to prove a debt in bankruptcy. Percival, in arguing, said: "But clearly