

company to a postponement of the trial. The contention is that by the common law of England all actions between British subjects and alien enemies are suspended during the war, and further that an alien enemy cannot appear and cannot be heard in our courts during hostilities.

There is, I think, abundance of authority for the proposition that an alien enemy, if objection be taken by the defendant, cannot sue as plaintiff in our courts and cannot proceed with an action pending in these courts while the state of hostilities, which makes him an alien enemy, lasts. Whether he can sue or proceed with his action if no objection be taken by the defendant is perhaps open to doubt. See, for instance, the judgment of Lord Davey in *Janson v. Driefontein*, 18 Times Law Reports 796, [1902] A.C. 484, at p. 499. It is, I think, equally true that a defendant alien enemy cannot during the war prosecute a counterclaim. Does the converse hold good and does the same rule obtain when an alien enemy is defendant? If one considers the reason for the rule that an alien enemy cannot sue or prosecute his action during hostilities it would appear that on principle the rule ought to be confined to those cases where the alien enemy is plaintiff. I take it that the reason why an alien enemy when plaintiff cannot proceed with his action against a British subject during hostilities is founded upon the assumption that when two countries are at war all the subjects of each country are at war, and that it is contrary to public policy for the courts of this country to render any assistance to an alien enemy to enforce rights which, but for the war, he would be entitled to enforce to his own advantage and to the detriment of a subject of this country. But to hold that a subject's right of suit is suspended against an alien enemy is to injure a British subject and to favour an alien enemy, and to defeat the object and reason of the suspensory rule. It is to turn a disability into a relief.

I know of no modern English authority on the point except a statement by Lord Davey in the *Driefontein* case, where, at page 499, he lays down three rules which he says are established in our common law, and expresses the third rule thus:—