

fore the revolution, gave it as his opinion, which has been virtually sustained by adjudications subsequent thereto, that under the provincial government, and of course since, the property of British merchants here has been, and is understood to be a *depositum* or peculiar security for the payment of country creditors; to the extent therefore of such property credit is given here without inquiry into the circumstances of the merchant elsewhere; and on these considerations our attachment *act and practice* have been founded; thus intimating, as the fact is, that the proceeding by attachment is founded as well upon the *custom* of the country as upon legislative enactments. (r)

Hence it appears, that this creditor might have obtained satisfaction from the property of the *Mollisons* in Maryland, by attachment; that it was his only remedy; and one which had been most emphatically framed to suit such cases as his, and was eminently calculated to afford the most effectual relief to country creditors against British debtors.

There can be no doubt, that *Hepburn* might have proceeded by attachment at any time during peace; but it is said, that the revolutionary war had commenced before this debt became due; and, that, from the 4th of July, 1776, to the peace of 1783, the *Mollisons* were alien enemies. It is now, however, universally admitted, that an alien enemy, resident in the country, may sue and be sued; and further, that the remedies on private contracts for the recovery of debts are not forever barred, but merely suspended by a war between the nations of the creditor and debtor. The only reason why a non-resident alien enemy is not allowed to sue is, that he should not be permitted to recover property and take it out of the country, so as thereby to strengthen the enemy. (s)

But this reason in no way applies to the case of a citizen creditor, suing by attachment to obtain satisfaction from a non-resident alien enemy debtor. In such case, our own citizen by making the property so available to the satisfaction of his own debt, does so far strengthen our own country at the expense of the enemy. (t) The disability of an alien enemy to sue is so extended as to prevent him from gaining any advantage for himself and his country; and, therefore, he is not only disabled from suing for the purpose

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(r) *Burk v. M'Clain*, 1 H. & McH. 236.—(s) *Vattel*, b. 3, s. 77; *Clarke v. Morey*, 10 John. Rep. 70; *Buchanan v. Curry*, 19 John. Rep. 137.—(t) *Willis v. Pearce*, 6 H. & J. 191, note.