

President considered the provision to mean that there was no power of the Government to forfeit a man's estate except during his life, no power of absolute forfeiture. But the majority in Congress believed that the provision in the Constitution did not affect the right of Congress specifically to prescribe an absolute forfeiture as the punishment upon conviction, but that it referred to cases not upon conviction. Everybody knows that so far as the personal estate of the party is concerned, it is absolutely forfeited by a proceeding *in rem*; in a great many instances forfeited not during his life but forever.

Mr. CLARKE. The gentleman has not denied the proposition I assert, which is just the difference between the President and Congress.

Mr. STIRLING. The gentleman has gone on to say that the effect of that interpretation is that a party may be convicted after his death. Now the Constitution says :

"Art. 6. In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defence."

Of course that denies the right to try a man after his death. But the words leave it in the power of legislation to prescribe what, on conviction, shall be the punishment of treason, that it may be the forfeiture of his estate. The gentleman wants that restricted to forfeiture during life. I am opposed to any forfeiture but on conviction; but on conviction I am in favor of an absolute forfeiture, if Congress or the Legislature see fit. It is well known that that was the practice of this State. The Legislature of this State, at the time of the Revolution, did absolutely forfeit the estates of a vast number of persons; and it afterwards sometimes restored that property to the descendants by act of Assembly, upon their proving that they were innocent parties, and not responsible for the act of their ancestors. That was the practice of our ancestors, absolutely to forfeit the estates of persons who under our Revolutionary Government still held their allegiance to the crown of Great Britain. But while they forfeited it absolutely, the Legislature had the right to say that if the children had not committed any crime, they should have the estate. Undoubtedly the Legislature never would take the property away from the widow or the children who did not sympathise with the treason. This article is almost the same as that in the Constitution of 1776. The bill of rights in that Constitution says :

"That there ought to be no forfeiture of

any part of the estate of any person for any crime except murder or treason against the State, and then only on conviction and attainder."

Now I propose to leave out the word "murder," and let it read "except treason against the State;" and I will add at the proper time "and then only on conviction," to my amendment.

Mr. CLARKE. The language of the Constitution of the United States is this :

"Congress shall have power to declare the punishment of treason; but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted."

The construction of this clause has always been this: If the party has been convicted, and it was understood that the party could only be found guilty of treason by conviction—

Mr. STIRLING. Will the gentleman allow me one moment? Certainly the argument of Congress was not that a man could be convicted after his death; but that the attainder should not work forfeiture after his death. Congress might and did prescribe forfeiture as a specific punishment. The provision was only to prevent the Court from prescribing forfeiture—a necessary consequent in England in common law upon the fact of conviction—as a punishment without conviction.

Mr. CLARKE. I could show by the record that the gentleman's position is not the true one taken in reference to it, if the documents were before us. I will state what the construction is. The construction always maintained has been that the party could only be found guilty of treason on conviction, that is, during his life. Then comes in the provision that it shall only work corruption of blood or forfeiture during the life of the person attainted. Therefore, if a person was convicted during his life, this clause of the Constitution is clear and positive that it shall only extend during the life of the person attainted; and not what is here contended, that if a party is tried and convicted during his life, under this provision of the Constitution any court had the right to forfeit his property except during his life. They wanted to meet another class of cases. When men had been guilty of fighting against the Government, they wished to provide by this law that they should proceed against this property *in rem*; and on this proceeding *in rem*, against the property, if the court found that the man who was dead had been guilty of treason, then they should have the right to forfeit it absolutely. This provision of the Constitution only touches the case of conviction during life; but it is proposed to give the court the power to proceed *in rem*, and proceeding *in rem*, to try a man for treason, and, if you do not convict him during his life, if, after he is dead, you