

"Which forfeiture of estate shall only continue during the life of the person attainted."

This is in the language of the Constitution of the United States.

Mr. STIRLING. My objection to that is that the clause of the Constitution of the United States to which the gentleman refers, has given rise to very great difference of opinion.

Mr. CLARKE. I have drawn this amendment to meet the very difficulty and doubt which now for the first time is supposed to exist in the provision in the Constitution of the United States. We have had the opinions of Mr. Webster and of all whom we have regarded as expounders of the Constitution; but now there is a new doctrine, and some doubt is expressed what its meaning. Nobody ever saw the difficulty before; but the ablest expounders of the Constitution consider it perfectly plain and clear. But the doubt has been expressed—the gentleman referred to it—and my amendment meets that very case.

The doubt which has just grown up is this: whether the expression "but no attainer of treason shall work corruption of blood or forfeiture, except during the life of the person attainted," means that the party shall be convicted after he is dead or not, or is confined to conviction during the period of his life. For the first time in this country the doctrine is attempted to be promulgated that after a man is dead you can try him for treason, enter a judgment of condemnation against him, and then forfeit his property. I say that that proposition is now for the first time broadly asserted in this land. The gentleman says it has always been open to doubt. Why, sir, at the time of the adoption of this Constitution, and through all the period of proscription of parties because of trials for treason, through all the decisions from the Supreme Court of the United States, coming from Chief Justice Marshall and the other chief justices and justices of the Supreme Court, that settled the law of the land and the construction of the Constitution, it was never supposed for a moment that we could try a man after he is dead, and convict him of treason; that when sleeping in the cold earth, after his spirit has gone back to its Maker, you could resuscitate that body, hold up his dry bones, and in the recollection of what he had done, call him to account, and if judgment was pronounced against him, you could reduce his children to beggary. It was construed to mean this: that a man must be alive, that he must, as the Constitution says, be confronted by his peers, and have a trial by jury, have the right to employ counsel, and enjoy all the other safeguards of the Constitution, which the amendments to the Constitution throw around him; and then, if convicted of treason, it will only work corruption of blood or forfeiture during the life of the person convicted. You could only enter a decree of condemnation of property,

which condemnation should extend during the life of the individual, the property of his children would not be destroyed. When he is dead, the property comes back for his heirs to inherit.

This trial of a dead man, this question of the forfeiture of property beyond the life of the party, this visiting it upon the innocent babe, is a thing which these times have for the first time produced here; and now for the first time do we hear it announced that the sins of the father, if sins he has committed, shall go down to a remote generation of children; and that without one word being said in his defence, by counsel, and without giving him any of the rights guaranteed by the Constitution to persons charged with crime.

Mr. STIRLING. I am willing to accept this portion of the amendment. I will add, by general consent to my amendment the words "and then only on conviction."

There was no objection.

Mr. CLARKE. I understand that the doubt in regard to the Constitution goes to the very doctrine I am now combatting, that you can convict a man after he is dead, and after his body is returned, dust to dust and ashes to ashes. This doctrine that after a man is dead you can convict him—

Mr. STOCKBRIDGE. Whose doctrine is that?

Mr. CLARKE. The gentleman from Baltimore city (Mr. Stirling) said that there was doubt with respect to the construction of the Constitution, and that doctrine has been freely asserted upon the floor of Congress. I was told by Mr. Schley that he was called upon to give an opinion upon this provision of the Constitution, and the doctrine announced upon the floor of Congress. That is what the gentleman refers to; and in order to avoid that ambiguity or doubt, it occurred to me that this language would leave it plain and clear.

Mr. STIRLING. I certainly had no intention to refer to that. I never heard that doctrine until to-day.

Mr. CLARKE. The gentleman said it was open to doubt and that is the only doubt that ever existed about it.

Mr. STIRLING. If the gentleman undertakes to decide his own opinions and mine too, that may be so.

Mr. CLARKE. Where is the doubt then? I ask the gentleman what doubt he referred to.

Mr. STIRLING. The doubt is this, as I understand it; and it is directly contrary to the doubt the gentleman states. There is a doubt whether that provision of the Constitution means to prohibit Congress from passing a law making an absolute forfeiture of estate in punishment of crime upon conviction, or merely meant to say that no attainer, that is, no conviction made after the death of the party, should absolutely forfeit his estate; and that was the very difference of opinion between the President and Congress. The