

find him guilty of treason, it not being a case of conviction under this article of the Constitution, upon this proceeding *in rem* against the property, you have a right to forfeit it absolutely.

Mr. STIRLING. That is not the proposition at all. The proposition related to cases where a man is tried for treason and convicted of treason. I distinctly stated that they did argue that property could be taken by a proceeding *in rem* after his death; and that was the decision.

Mr. CHAMBERS. Perhaps a little history of this business of treason, attainder and conviction, may throw some light on the subject before us; which, I will preface my remarks by saying, is a mere question of the innocent wife and children of a person convicted of disloyalty.

Treason in the country from which we take our notions and jurisprudence, is an offence sometimes judged of by Parliament in the shape of bills of attainder; sometimes by the ordinary process of courts and juries. The attainder was a species of political vengeance visited often upon individuals from partisan feeling, and productive of the utmost injustice and violence. With regard to that mode of proceeding, there could be no sort of doubt, such as the gentleman seems to intimate, for, under the Constitution of the United States, it was decided to be an utterly inexcusable mode of punishment. The 9th section of article 1st of the Constitution of the United States leaves no room for doubt about that:

"Sec. 9. No bill of attainder or *ex post facto* law shall be passed."

Yet the Constitution says, that no attainder of treason shall work corruption of blood or forfeiture, except during the life of the person attainted. The Constitution of the United States having said there shall be no bill of attainder in the technical sense of the term, when it speaks of the fact of attainder in this other clause, certainly could have meant nothing else than the only other mode of attainder, by conviction in a court of justice.

According to the Constitution of the United States, then, a party must first be convicted by court and jury. It would be impossible for a court and jury to convict a party under the Constitution of the United States, and, thank God, so far impossible under any act of Congress, except by having the party personally to answer to the charge. I do not now speak of what courts martial may do. I certainly do not mean to contend that there may not be such convictions; but I do contend that if there are, they are utterly without authority of the Constitution of the United States.

This Constitution of the United States then is very sufficient evidence that in the adoption, and, as I hope, in the amelioration of

the criminal laws to which our laws were assimilated, and which, to a certain extent, still prevailed in the minds of those who framed our Constitution in 1776, those criminal laws were ameliorated with regard to the innocent wives who, at former periods, had been victims, under the laws, of the punishment of those with whom they had been connected. In other words, it ceased to be the opinion as it had been in England, and, as in the early period it had been here, that the innocent child and wife should suffer for the offences of the parent and husband, with which offence they had no connection, and possibly no sympathy. In the Revolutionary war we confiscated the property of traitors by attainder. Our ancestors in 1776 had not abandoned that idea. In very many cases property was ordered to be sold. The State had a regular agent, if I recollect right, for the purpose of making sales of confiscated property. In such cases the party had gone abroad. In some instances the property was not sold, except a limited interest in it. I believe there was not a solitary instance in which, where that was the case, if a subsequent application was made to the Legislature, it declined to give the children what interest remained in them of the property of their ancestors who had gone abroad, and been unfaithful to the interests of the State—in short, had been a tory. Those who had abandoned the country, or gone into the English service, or who went out of the State, had their property confiscated.

The Constitution of the United States commenced a system of amelioration. I do not go through this argument because my learned friend over the way, (Mr. Sands,) has said it never was dreamed of, but all the digests may be ransacked, and there never was a counsel, judge, or lawyer prosecuting a case of treason, or defending a case of treason, that ever intimated anything else as the meaning of the second clause of the third section of the third article of the Constitution, except what its plain words import, that the confiscation article should effect those entitled to its benefit, only during the life of the party convicted. Our Constitution of 1850, adopts the same idea:

"Art. 24th. That no conviction shall work corruption of blood, or forfeiture of estate."

Now are we to make a retrograde movement? To that I wish to invite the attention of the Convention, as being in fact the whole question before us. Shall there be such a provision in this Constitution as that the innocent family, the wife and children of a man who shall have been misguided by any feeling whatever. I care not how vital may be his crime, if a man who shall have taken such a step, and placed himself in such a position that it confers upon the government the right to forfeit his property, that his wife