

## Sec. 3—Treason

## Cl. 2—Punishment

Clause 2. The 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.

## CORRUPTION OF THE BLOOD AND FORFEITURE

The Confiscation Act of 1862 “to suppress Insurrection, to punish Treason and Rebellion, to seize and confiscate the Property of Rebels”<sup>1444</sup> raised issues under Article III, § 3, cl. 2. Because of the constitutional doubts of the President, the act was accompanied by an explanatory joint resolution which stipulated that only a life estate terminating with the death of the offender could be sold and that at his death his children could take the fee simple by descent as his heirs without deriving any title from the United States. In applying this act, passed pursuant to the war power and not the power to punish treason,<sup>1445</sup> the Court in one case<sup>1446</sup> quoted with approval the English distinction between a disability absolute and perpetual and one personal or temporary. Corruption of blood as a result of attainder of treason was cited as an example of the former and was defined as the disability of any of the posterity of the attained person “to claim any inheritance in fee simple, either as heir to him, or to any ancestor above him.”<sup>1447</sup>

<sup>1444</sup> 12 Stat. 589. This act incidentally did not designate rebellion as treason.

<sup>1445</sup> *Miller v. United States*, 78 U.S. (11 Wall.) 268, 305 (1871).

<sup>1446</sup> *Wallach v. Van Riswick*, 92 U.S. 202, 213 (1876).

<sup>1447</sup> *Lord de la Warre's Case*, 11 Coke Rept. 1a, 77 Eng. Rept. 1145 (1597). A number of cases dealt with the effect of a full pardon by the President of owners of property confiscated under this act. They held that a full pardon relieved the owner of forfeiture as far as the government was concerned but did not divide the interest acquired by third persons from the government during the lifetime of the offender. *Illinois Cent. R.R. v. Bosworth*, 133 U.S. 92, 101 (1890); *Knote v. United States*, 95 U.S. 149 (1877); *Wallach v. Van Riswick*, 92 U.S. 202, 203 (1876); *Armstrong's Foundry*, 73 U.S. (6 Wall.) 766, 769 (1868). There is no direct ruling on the question of whether only citizens can commit treason. In *Carlisle v. United States*, 83 U.S. (16 Wall.) 147, 154–155 (1873), the Court declared that aliens while domiciled in this country owe a temporary allegiance to it and may be punished for treason equally with a native-born citizen in the absence of a treaty stipulation to the contrary. This case involved the attempt of certain British subjects to recover claims for property seized under the Captured and Abandoned Property Act, 12 Stat. 820 (1863), which provided for the recovery of property or its value in suits in the Court of Claims by persons who had not rendered aid and comfort to the enemy. Earlier, in *United States v. Wiltberger*, 18 U.S. (5 Wheat.) 76, 97 (1820), which involved a conviction for manslaughter under an act punishing manslaughter and treason on the high seas, Chief Justice Marshall going beyond the necessities of the case stated that treason “is a breach of allegiance, and can be committed by him only who owes allegiance either perpetual or temporary.” However, see *In re Shinohara*, Court Martial Orders, No. 19, September 8, 1949, p. 4, Office of the Judge Advocate General of the Navy, reported in 17 Geo. Wash. L. Rev. 283 (1949). In this case, an enemy alien resident in