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Title: Letter from Jeremiah Black to Jacob Thompson

Date: November 2, 1858

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Attorney General's Office At. Nov. 2. 1858.

Sir,

The question referred to me by yours of the 3d of September has received my Earnest attention. I have Gramonia it with a derive, if possible, to concur in the liberal construction which appears to have been given to the acts of July 29, 1848, and I ch 3.1853 going pourous to midous in cutain enis but I have not been able to do so.

The former of those acts provides, that the "ridons of all officers, non comminioned officers, mu-"Dicians, Doldiers, mariners or marines and Indian " spies, who chall have seend in the continental line, "state troops, voluntees, militia or in the naval service in the revolutionary war with Great Britain, " shall be entitled to a pension during ench widow-" hovd to The benefits of the act use, in Expres turns, withheld from midons married after the first day of Sannary 1800, but were Estended to those widows by the second section of the act of of ct. 3, 1853. The question submitted is whether under there acts and the declaratory act of Aug. 5, 1854, a pennion con lanfully be paid to a woman for the period Embraced by her second coverture, I thenh it is plain Cannot for the following reasons.

1. The act gives the pension, "during such midowhord" The idea that it is to be paid during recond coverture is thus not only not implied, but clearly excluded. The words "during widowhord" have a well determined legal import. In courture them swas to include any portion of time covered by a second mainage is as enoneous as it would be to declare that words giving an citate for life, convey it in fee wimple.

2. But again, it is wident from the whole system of legislation granting half pay and pennous to widows that it was never intended that they should be paid during second coverture. I have examined at least twenty general acts granting naval and military pennous and halfpay to widows. Bithout a solitary sception, they provide, in spep turns, that the allowance shall cease to the widow in the event of her death or intermarriage. It would be ledious to commorate there several statutes, somed at interrals during the last half century; and get with out enumeration it is impossible to realize the full force of this argument. They evence a uniform its determination on the part of Congress to limit their brunks to such persons as are vidous indeca". The reason of this restriction is as satisfactory as it is apparent. The woman who has a second nurband to support her is presumed to be beyond the necessity of arking a maintenance from the government.

3. The acts which have been regarded as Aceptions In this general policy lend rather to thengthen than to maken this construction. That of August 23, 1842 pronds, that a record marriage shall not de. piwe a widow of her claim under the act of duly 7. 1838, "The bung a widow at the time she makes application for a pension. Had this been intended to allow a pennon during second courtine, why should The be required to be a widow at the time of making her application? If she cannot apply for a pension during Couland, Why should the be paid a pennion during contino? If she is not pumitte a to ask muly she should not be pumitted to acceive. I have no disposition to distint long rettled constructions, but I can find no endence of either in the act of Aug. 23-1842 or in the act of Mar. 3. 1837 or in any other act to make halfpay or fremois to widows payable during the period of a contrary intention is everywhere abundant and ounhelming.

A. There views render it immaterial to sepren an opinion upon the Effect of the act of Aug. 5. 1854 6-3.

That section pronder that the act of ctch. 3, 1853 among others "chall not be secretime as to deprive any widow

from the benefits therein granted for the services of her hurband, though the may have married again, Penided however that the applicant is a widow at the time of making the claim, Provided, such party that not receive pennion during countere!

It has been ingenevisly argued that this provision applies only to the first section of the act of 1853. The language is however sufficiently general In corn the whole of that act. Beside the use of the word pension" would seem to apply more particularly to the seems exchan which relates, than to the first section which relates to half pay.

July 29. 1848 and the second section of the act of 3th 3.1853 do not authorize the payment of a pennin to while one is munical in any countries subsequently to the french command in any countries subsequently to the decease of the soldier as where and on the makes her claim. In a doubtfut case I chomed pay quat respect to the unage of the department; but the here there is in my mind no doubt. The language of the serval acts and the whole scope of legislation on similar sabjects demand the continction here given.

Gomes our suspectfully,

2.5. Bruk

Am Sacot Thompson, Secretary of the Interior.

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Sir,

The question referred to me by yours of the 3d of September has received my earnest attention. I have examined it with a desire, if possible, to concur in the liberal construction which appears to have been given to the acts of July 29, 1848, and Feb. 3, 1853 giving pensions to widows in certain cases, but I have not been able to do so.

The former of those acts provides "that the widows of all officers, non commissioned officers, musicians, soldiers, mariners or marines and Indian spies, who shall have served in the continental line, state troops, volunteers, militia or in the naval service in the revolutionary war with Great Britain, shall be entitled to a pension during such widowhood, etc. The benefits of the act were, inexpress terms, withheld from widows married after the first day of January 1800, but were extended to those widows by the second section of the act of Feb, 3, 1853. The question submitted is whether under these acts and the declaratory act of Aug 5, 1854, a pension can lawfully be paid to a woman for the period embraced by her second coverture. I think it cannot for the following reasons.

- 1. The act gives the pension "during such widowhood" The idea that it is to be paid during second coverture is this, not only not implied, but clearly excluded. The words "during widowhood" have a well determined legal import. To (construe) them was to include any portion of time covered by a second marriage is as erroneous as it would be to declare that words, giving an estate for life, convey it in fee simple.
- 2. But again it is evident from the whole system of legistation granting half pay and pensions to widows that it was never intended that they should be paid during second coverture. I have examined at least twenty general acts granting naval and military pensions and half pay to widows. Without a solitary exception, they provide in express terms, that the allowance shall cease to the widow in the event of her death or intermarriage. It would be tedious to enumerate these several statutes passed at intervals during the last half century: and yet without enumeration it is impossible to realise the full forse of this argument. They evince a uniform determination on the part of Congress to limit its bounty to such persons as are "widows indeed". The reason of this restriction is as satisfactory as it is arrarant. The woman who has a second husband to support her is presumed to be beyond the necessity of asking a maintenance from the government.
- 3. The acts which have been regarded as exceptions to this general policy tend rather to strengthen than to weaken this construction. That of August 23, 1842 provides that a second marriage shall not deprive a widow of her claim under the act of July 7, 1838, "she being a widow at the time she makes application for a pension." Had this act been intended to allow a pension during second coverture, why should she be required to be a widow at the time of making her application? If she cannot apply for a pension during coverture, why should she be paid a pension during coverture? If she is not permitted to ask, surely she sould

not be allowed to receive. I have no disposition to disturb long settled constructions but I can find no evidence either in the act of Aug. 23, 1842 or in the act of Mar. 3, 1837 or in any other act to make half pay or pensions to widows payablr during the period of second coverture. On the other hand the evidence of an opposite intention is every where abundant and overwhelming.

4. These views render it immaterial to express an opinion upon the effect of the act of Aug. 5, 1854. It's third section provides that the act of Feb. 3, 1853 among others "shall not be so construed as to deprive any widow from the benefits therein granted for the services of her husband. Though she may have married again, Provided however that the applicant is a widow at the time of making the claim. Provided, such party shall not receive pension during coverture."

It has been ingeniously argued that this provision applies only to first section of the act of 1853. The language is however, sufficiently general to cover the whole of that act. Beside the use of the word "pension" would seem to apply more particularly to the second section which relates to pensions than to the first section which relates to half pay.

Upon the whole it is clear, that the acts of July 29, 1848 and the second section of the act of Feb. 3 1853 do not authorize the apyment of a pension to a woman while she is married. In a doubtful case I should pay great respect to the () of the department: but here there is, in my mind, no doubt, The language of the several acts and the whole scope of legislation on similar subjects demand the construction here given.

Yours very respectfully,

J.S. Black

Hn. Jacob Thompson Secretary of the Interior.