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Title: Letter from Jeremiah Black to Jacob Thompson

Date: November 2, 1858

Location: I-BeachW-1974-1

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Remarkeable also of JS Black - being a fine legal opinion
as atty. genl - with later corrected etc

Attorney General's Office

~~Oct.~~ Nov. 2. 1858.

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, mu-
"sicians, soldiers, marines or marines and Indian
"spies, who shall have served in the continental line,
"state troops, volunteers, militia or in the naval ser-
"vice, in the revolutionary war with Great Britain,
"shall be entitled to a pension during such widow-
"hood" &c. The benefits of the act were, in express 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 em-
braced by her second coverture. I think it is plain
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 thus, not only not implied, but clearly excluded. The words "during widowhood" have a well determined legal import. To construe them so as 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 legislation 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 realize the full force of this argument. They evince a uniform determination on the part of Congress to limit ^{its} ~~their~~ bounty to such persons as are "widows indeed". The reason of this restriction is as satisfactory as it is apparent. The woman who has a second husband to sup-

port 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 should not be ~~permitted~~ ^{allowed} to receive. I have no disposition to disturb long settled constructions, but I can find no evidence of, 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 payable during the period of second coverture. On the other hand the evidence of a ~~contrary~~ ^{an opposite} intention is everywhere abundant and overwhelming.

4. These views render it immaterial to express an opinion upon the effect of the act of Aug. 5. 1854 ~~and~~. ^{as this} That 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 the first section of the act of 1853. The language is however sufficiently general to cover the whole of that act. Be it so 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 July 3, 1853 do not authorize the payment of a pension to a woman ^{while she is married} ~~for the period embraced in any coverture subsequent to the decease of the soldier, as whose widow she makes her claim.~~ In a doubtful case I should pay great respect to the usage of the department; but ~~this~~ 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

Am. Jacob Thompson,
Secretary of the Interior.

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Duchonau

1885, 1881

Opinion -
from 2 7855.

Provision to Madison -
written 205 of 1848-1
1853.

Removal pages 5

214-15 of Opinions

W. D. Black

Reference: 21183.

Attorney General's Office
Nov. 2 1858

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 thus, 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 legislation 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 force 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 should

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 payable 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. Its 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 payment 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.