IN SENATE OF THE UNITED STATES.

July 19, 1842.

Ordered to be printed.—To accompany Joint Resolution Senate 18.

Mr. Bates submitted the following

REPORT:

The Committee on Pensions, who were instructed "to inquire what legislation is necessary to enable Lydia Conine to obtain her pension, and to provide for cases similarly circumstanced," respectfully report:

Lydia Conine, on the 20th of May, 1842, was duly enrolled as a pensioner under the act of the 7th of July, 1838, at the rate of $30 per annum. Her pension commenced on the 11th of June, 1836, to terminate on the 4th of March, 1841, being for five years, less the life of her husband, after the 4th of March, 1836. On the 13th of July, instant, the Commissioner of Pensions gave to Mrs. Conine notice, that, by order of the Secretary of War, founded upon an opinion of the Attorney General, the payment of her pension had been stopped. The opinion upon which the order was given is as follows:

"Office of the Attorney General, *May* 31, 1842.

"Sir: I have had the honor to receive and to consider your observations of the 30th instant, on the construction heretofore put upon the words of the act of 7th July, 1838, in relation to pensions to be paid to the widows of officers "who have died," and who, but that they were dead at the time of the passing of the act of 1832, would have received their pensions under this latter act.

"Considering it as *res integra*, I should say that the case of a widow whose husband actually received his annuity under that act, is not within the provisions of the statute of 1838. Besides, that the words do not embrace the case, and beside the difficulty (insuperable, it appears to me) in the way of a widow drawing pay from the 4th of March, 1836, when her husband happens to have survived that epoch, the 4th section of the act of 1832 provides expressly for the case of an officer dying "during the period intervening between the semi-annual payments directed to be made." The provision is, that the proportionate amount of pay which shall accrue between the last preceding semi-annual payment, and the death of such person, shall be paid to his widow. The act of 1832, therefore, expressly contemplates the case of a husband entitled under it, and gives the widow all he would have received, and no more. *Expressio unius, &c.*

"The act of 1836 took up a case, not within that of 1832. It provides for a certain description of wife, who was totally excluded from all benefit under that act by the death of her husband. The act of 1838 goes a little further—it extends to another description of wives—but it still contemplates them as having been so situated as not to profit by the act of 1832, and it gives to them what their husbands, had they *been alive*, would have taken.

"I do not see how language can be plainer. But Mr. Butler's opinion having settled the practice under the act of 1836, it is perhaps too late to change your practice in regard to it.

"The act of 1838 differs from the last-mentioned statute in the important feature above referred to. The widow is to begin to draw her pension from March, 1836. Now, if her husband were then alive, it is clear she could not be entitled to an additional allowance in her own right. I hold that to be fatal to the application of Mr. Butler's reasoning to this last act. With respect to this act, therefore, you are free to take the course you shall judge fittest.

"I should have been rejoiced to be able to adopt a construction favorable to the claims of the widows of these brave men; but the law which gives, disposes, and I am bound to interpret it as I find it.

"I have the honor to be, sir, your obedient servant,

"H. S. LEGARE.

"Hon. JOHN C. SPENCER,
"*Secretary of War.*"

"PENSION OFFICE, *June* 4, 1842.

"In conformity with the foregoing opinion of the Attorney General, the Secretary of War has decided that a pension can not be granted to a widow under the act of 1838, whose husband was living at the time of the passage of the act of 1832, and particularly if he received an annuity under that act.

"J. L. EDWARDS,
"*Commissioner of Pensions.*"

The husband of Mrs. Conine having died after the passage of the act of the 7th of June, 1832, to wit, on the 11th of June, 1836, she is not, therefore, entitled to her pension. Such is the decision. In the administration of the Pension Office, the practice has been uniformly otherwise; and if the death of the husband, he being a pensioner, happened after the 4th of March, 1836, a deduction *pro tanto* was made from the five years annuity to his widow.

The act of 1838 provides, "That if any person who served in the manner specified in the act of 1832, *have died*, leaving a widow, &c., such widow shall be entitled to receive, for five years from the 4th of March, 1836, the annuity or pension which might have been allowed her husband in virtue of the act of 1832, *if living at the time it was passed.*"

The third section of the act of the 4th of July, 1836, provides, in the same words, for another class of widows. The only difference between the two provisions is as to the *time* of marriage, the *term* of the annuity, and the *time* of its commencement.

A construction has been given to the 3d section of the act of 1836, that the time of the death of the husband is immaterial, if it preceded the passage of the act of 1836. This construction was given by the late Attorney General, Mr. Butler; it was cotemporaneously confirmed by the Secretary of War, and it has been acted upon by the Commissioner of Pensions ever since. Moreover, it has been sanctioned by Congress. Unless it can be imagined that the joint resolution of the 7th of July, 1838, which extends the benefit of the act of 1836 to widows whose husbands died *after* its passage, intended it should be withheld from those whose husbands were dead when it passed.*

* Resolution of July 7, 1838.—*Resolved*, &c., That the benefits of the third section of the act of July 4, 1836, shall not be withheld from any widow whose husband has died since the passage of the said act, or who shall hereafter die, if said widow shall otherwise be entitled to the same.

In the opinion of the committee, the interpretation of the act of 1836, thus officially, practically, and legislatively settled, and thus applied, as it had been, to the act of 1838, might properly enough have been continued during its brief and very limited operation.

The provision in the two acts, are, "if any person *have died* leaving a widow" &c., not if any person *had died* before the passage of the act of 1832. But in the perfect tense, "if any person *have died*" before the passage of the respective acts then in progress, such widow shall, &c. The language admits of but one construction. The loose expression, at the close of the section, is used as descriptive of the *rate* of pension and in connexion with that subject, and ought not, thus out of place for the purpose, to be construed as an intended limitation upon the previously expressed condition upon which the widow was to be entitled to it. Nor do the committee deem it so unreasonable that Congress should grant a five years' annuity to the widow of a soldier of the Revolution, which might lap upon the time her husband might have received a pension, as constructively to set aside, and, if the practice had not been otherwise, the committee would say nor to *abridge*, an express grant clearly within the competency of Congress to make. The committee do not perceive that the residuary clause in the act of 1832 has any bearing upon the subject. As, however, the decision of the Secretary of War is the law of the Pension Office, the committee recommend the passage of the following joint resolution:

Resolved by the Senate and House of Representatives in Congress assembled, That the benefits of the act, entitled, "An act granting half-pay or pensions to certain widows," approved the seventh day of July, eighteen hundred and thirty-eight, shall not be withheld from any widow whose husband died after the passage of the act of the seventh of June, eighteen hundred and thirty-two, and before the act of the seventh of July, eighteen and thirty-eight, if otherwise entitled to the same.