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TERMINATION OF OFFICE; PUBLIC OFFICER; ACCEPTANCE OF AN INCOMPATIBLE OFFICE. The question of the termination of the authority of a public officer by reason of his acceptance of an incompatible office, has recently been passed upon by the Supreme Court of Michigan in the case of *Attorney-General ex relatione Moreland* v. *Common Council of City of Detroit*, 70 N. W. Rep. 450 (March 19, 1897). Pingree, mayor of Detroit, having been elected governor of Michigan, attempted to exercise the functions of both offices. The question as to his right to do so having come before the court, it was held that the offices of mayor of a city and governor of a State are incompatible, and cannot be occupied by one and the same person at the same time, and Pingree, having accepted the office of governor, the office of mayor thereby became vacant. This decision is in accordance with the common law rule on the subject, that when the occupant of one office accepts another incompatible with the first, he thereby vacates the first office, and his title thereto is *ipso facto* terminated without any further act on his part, and without any judicial or other proceedings. While the rule is very clear, the application of it has been far from uniform,

partly due to statutory provisions and partly due to different views of judges as to what constitutes incompatibility. Thus, in New York, a retired army officer may act as Aqueduct Commissioner: *People* v. *Duane*, 121 N. Y. 367, 1890; while in Texas he may not act as mayor of a city: *State* v. *DeGress*, 53 Texas, 387 (1880). In Indiana an officer of volunteers may not act as Auditor of the county: *Mehringer* v. *State*, 20 Ind. 103 (1863); while in Iowa he may act as District Attorney: *Bryan* v. *Cattell*, 15 Iowa, 550 (1864).

It is to be noted that the above rule applies to offices under the same sovereignty and that, therefore, the acceptance of an office existing under a State law, does not vacate an office existing under a national law: *Foltz* v. *Kerlin*, 105 Ind. 222 (1885); *DeFurk* v. *Com.*, 129 P. S. 151 (1889). But if the incumbent elects to hold the latter he must surrender the former: *People* v. *Leonard*, 73 Cal. 230 (1887). The state courts will declare a state office vacant on the acceptance by the incumbent of a Federal office of the prohibited class: *Dickson* v. *People*, 17 Ill. 191 (1855); *People* v. *Brooklyn*, 77 N. Y, 503 (1879).

WILLS; RESTRAINTS ON ALIENATION. In the case of *Morse* v. *Blood*, 71 N. W. 682, Minn. (June 8, 1897), the testator left his entire property to his wife, "on condition that in no case shall she give or bequeath one cent of said estate to any member of my family or any relation of her own." Though it is generally held that a condition in restraint of alienation to particular classes of persons is good, the court said that such a condition should not be allowed where it is so vexatious as to prevent any alienation for a limited time. The effect of such a condition as the above would be to tie up the real estate during the widow's life, for no purchaser could safely take it, when it might be forfeited at any time by the widow giving a drink or other trifling gift to any of the forbidden persons. And, moreover, if the estate was forfeited by her gift or devise, it would revert to the testator's heirs, who were the very persons he desired to exclude. The court therefore held this condition void as being inconsistent with the grant of a fee, and also as being inconsistent with itself. A provision in almost the same language, "That my widow shall not will to any of my blood kin or hers any of the estate," was held void, as inconsistent with the nature of the estate, in *Barnard's Lessee* v. *Bailey*, 2 Har. (Del.) 56 (1835), and in *Ludlow* v. *Bunbury*, 35 Beav. 36 (1865), a condition made by the wife that if (B.), his wife, or descendants, acquire any interest, the whole estate of the husband should cease, was held void.

The rule allowing partial restraints on alienation, is, it must be remembered, an exception to the general policy of the law and the principle of the above cases in establishing an exception to that rule, and returning to the rule of public policy, seems to be that such conditions should not be permitted where, though partial, they

are unreasonable, and have the effect of keeping the estate out of the market.

WILLS; REVOCATION BY SUBSEQUENT MARRIAGE. The Supreme Court of Wisconsin has recently decided, in *Lyon* v. *Cole*, 71 N. W. 362 (May 21, 1897), that under the statutes of Wisconsin, which give married women the absolute power of disposing of their property by will, the will of a single woman is not revoked by her subsequent marriage.

The common law rule was that the will of a man was revoked by subsequent marriage and birth of issue, but neither circumstance, standing alone, was sufficient to revoke: *Christopher* v. *Christopher*, Dick. 445 (1771); *Doe d. White* v. *Barford*, 4 M. & S. 10 (1815). But the will of a woman was revoked by marriage alone: *Forse* v. *Hembling*, 4 Rep. 60 (1588); *Hodsden* v. *Lloyd*, 2 Bro. Ch. 534 (1789). The reason for this difference was that, in the case of a man, only such a change in his circumstances as to alter the course of descent was held sufficient to constitute an implied revocation of his will; while, in the case of the woman, marriage, by destroying her right over her property, destroyed the ambulatory nature of her previous will. Therefore, the courts held that the will, being unable to retain one of its essential qualities, must be revoked by marriage. Where, however, the woman retains the right to devise during coverture, by ante-nuptial contract, as she has thereby the right to alter the previous will, she is so far a *feme sole*, and that will is not revoked by her marriage: *Stewart* v. *Mulholland*, 88 Ky. 40 (1888).

Following this idea, that the common law rule ceased when the reason for it ceased, the court, in the case under discussion, said that since a married woman is now, by statute, in Wisconsin, empowered to will as freely as if she were a man, the law in regard to the revocation of her will should be the same as it is in the case of a man. In other States, where marriage and birth of issue are still both necessary to revoke a man's will, they have, after the Married Women's acts, been held equally necessary to revoke a woman's will: *Miller* v. *Phillips*, 9 R. I. 137 (1868); *Fellows* v. *Allen*, 60 N. H. 439 (1881); *Webb* v. *Jones*, 36 N. J. Eq. 163 (1882); *Noyes* v. *Southworth*, 55 Mich. 173 (1884); *Emery, Appellant*, 81 Me. 275 (1889); *Roane* v. *Hollingshead*, 76 Md. 369 (1892). In *Re Tuller's Will*, 79 Ill. 99 (1875), the court said that the reason of the rule of implied revocation was that the marriage and birth of issue, in England, and marriage alone here, change the course of descent, and that therefore it was generally held in this country that marriage alone, of a man or woman, was a revocation of a previous will, as husband and wife are here each other's heirs; but that where the marriage did not alter the course of descent, as in this case, where the devisees were the children of the first marriage, and therefore heirs, there was no revocation. The same principle was followed in *Re Ward's Will*, 70 Wis. 251 (1887),