

File No. 25627 Continued.

"It is well settled that the acts of an officer de facto so far as the rights of third persons are concerned are, if done within the scope and by the apparent authority of the office, as valid and binding as if he were an officer legally elected and qualified for the office and in full possession of it."

Also see State vs. Carroll, 38 Conn. 449.

In McQuillan on Municipal Corporations, Vol. 2, page 1046,  
it is said:

"When the appointing power has made an appointment of a person who has not the qualifications required by law, the appointment is not void. The person appointed is de facto an officer; his acts in the discharge of his duty are valid and binding. He may be guilty of usurpation and may be punished for acting without being qualified; but the peace and repose of society require that his official acts so far as others are concerned should be valid. This is true of all officers."

The proposition that the acts of a de facto officer are valid and that the holder of a certificate of appointment or a commission to office is prima facie entitled to that office, is supported by a long list of authorities including the following:

Robinson vs. Beebe, 52 Ala., 66  
State vs. Judge, 48 La. Annual, 1501,  
State vs. Oates, 86 Wis., 634,  
Hamlin vs. Kassefer, 15 Ore., 456.

It is apparent therefore from all of the authorities that so far as third parties are concerned the Acts of a de facto officer, and Thompson is in any event such an officer, must be respected.

With reference to the liability of municipalities or disbursing officers of municipalities for the payment of salaries to de facto officers, the rule is well settled that if payment of salary is made to one who is acting as an officer de facto, the one who is actually entitled to the office cannot compel either the City or its disbursing officers to make payment the second time. Mechem on Public Officers, Section 332 says: