

File No. 25627 Continued.

"The Government cannot be compelled to pay a salary the second time to an officer de jure when he has recovered the office where the officer de facto held under color of title."

See also Auditors vs. Benoit, 20 Mich. 176.
Dolan vs. Mayor, 68 N. Y. 274.
McQuillan on Municipal Corporations,
Vol. 2, page 1124.

In Dolan vs. Mayor above quoted, the Court said:

"In appointing Keating, the justice transgressed this limitation and exceeded his power. But the fact that an appointment to a public office was illegally made, does not ipso facto deprive the person appointed of the character of a de facto officer.

It is clear that if the city could rightfully pay the salary to Keating during his actual incumbency, and has paid it, it cannot be required to pay it again to the plaintiff. We are of opinion that payment to a de facto public officer of the salary of the office, made while he is in possession, is a good defence to an action brought by the de jure officer to recover the same salary after he has acquired or regained possession.*****

If fiscal officers, upon whom the duty is imposed to pay official salaries, are only justified in paying them to the officer de jure, they must act at the peril of being held accountable in case it turns out that the de facto officer has not the true title; or if they are not made responsible the department of the government they represent is exposed to the danger of being compelled to pay the salary a second time. It would be unreasonable, we think, to require them, before making payment, to go behind the commission and investigate and ascertain the real right and title. This, in many cases, as we have said, would be impracticable. Disbursing officers, charged with the payment of salaries, have, we think, a right to rely upon the apparent title, and treat the officer who is clothed with it as the officer de jure, without inquiring whether another has the better right."

I have no hesitancy, therefore, in advising that you should pay Mr. Thompson the salary to which he is entitled since his appointment on November 19th, and that you should further pay the salaries to any clerks or subordinates in the office of Mr. Thompson appointed by him..

In the remote event that someone should raise the question as to the validity of Mr. Thompson's appointment or the validity of the appointment of those named by him, and it should be decided that Thompson's appointment was not valid, the City would not