

"under an appointment made to fill a vacancy will be a *de facto* officer, although there was in reality no vacancy when the appointment was made."

Then in the municipal code we find in article 120 the principle laid down that the official acts of a person filling, illegally, an office, cannot be set aside solely by reason of the illegal exercise of such office. "No vote given by a person filling, illegally, the office of member of the council, and no act in which he participates in such quality, can be set aside solely by reason of the illegal exercise of such office."

Let us apply these quotations to the present case. Mr. McNally, at all events, filled the office of warden under a color of right by virtue of an election made by the proper authority; he was at least the warden *de facto*; and he performed acts in favor of a third party, who had a previous right thereto under the by-law authorizing the bonus and the creation and issue of the debentures, which debentures the warden *de jure* could have been forced to design and issue by mandamus.

I am constrained therefore to decide that if Mr. McNally was not the warden *de jure*, he then occupied the office of warden under the color of an election and under a color of right, that he was not in possession of the office as an usurper, that he was the warden *de facto*, and that his acts as such are binding upon the corporation.

The last question is as to the effect of the proceedings of the general quarterly session of the 8th March, 1882.

As to the possibility and effect of a ratification by the county council at that session of Mr. McNally's acts, I refer to the following authorities:

Morawetz, No. 618: "It is an elementary principle of the law of agency, that a person on whose behalf an act was done by another, without authority, under an assumed agency, may adopt and thereby ratify the act; and after such ratification the act will be binding upon the party on whose behalf it was done, to the same extent as if it had been performed in pursuance of a previous grant of authority."

Kent's Commentaries, vol. 2, page 616:

"It is a very clear and salutary rule in relation to agencies, that where the principal, with knowledge of all the facts, adopts or acquiesces in the acts done under an assumed agency, he cannot be heard afterwards to impeach them under pretence that they were done without authority or even contrary to authority."

Dillon, No. 463: "A municipal corporation may ratify the unauthorized acts and contracts of its agents or officers, which are within the corporate powers, but not otherwise."

The ratification by a municipal council of an unauthorized act of one of its officers, or of the act of a person assuming to be its officer, is therefore possible when it comes within the scope of the powers of the corporation. Of course, if the act is *ultra vires* of the corporation, it cannot be ratified, because the act of incorporation or the charter does not authorize it in the first place; but where the corporation has the right to do an act, it has also the right to ratify it when it has been irregularly done, or when it has been performed by an unauthorized officer or by a person assuming to be its officer.

In this case the act which it is sought to invalidate, is the signing and issuing of the debentures under the by-law by Mr. McNally. This act was within the scope of the powers of the county corporation; the council was authorized to vote a bonus to the railway company and to make and issue debentures in payment of the bonus, and it was therefore a fit subject for ratification. After its ratification, supposing it to have been unauthorized and informal, it became binding upon the county corporations. I also refer on this point to Angell and Ames, No. 304: "If a corporation ratify the unauthorized act of its agent, the ratification is equal to a previous authority, as in the case of natural persons; at all events, where it does not prejudice the rights of strangers."

Now, even supposing that Mr. McNally signed and issued the debentures under an illegal assumption of office, and without authority, his act in so doing became the act of the corporation of the County of Pontiac, and this not by a vote of the majority, but by the unanimous vote of the council, adopt-