

Masonic Questions Answered by the Courts

by

ALPHONSE CERZA, 33^o

Riverside Lodge No. 862, Riverside, Illinois;

Past Master, Waubansia Lodge No. 160, Chicago, Illinois; F.P.S.



THE MASONIC SERVICE ASSOCIATION
8120 FENTON STREET
SILVER SPRING, MD. 20910-4785

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EDITOR'S PREFACE

The Masonic Service Association is pleased to offer this pamphlet to Masonic leaders and students as "good and wholesome instruction" in one area of fraternal activity in which we sincerely hope the Craft will be involved only rarely, namely, courts of law.

For the average Brother, merely reading the questions and the answers given by the courts will provide a better understanding of what is involved when a Masonic organization or individual "goes" or "is taken" to court. The variety of situations and decisions described herein will definitely help to make "a better informed Mason."

While probably only a few of the readers of this pamphlet will be seriously interested in the names of the cases and the citations and references pertaining to them, they can be of great value to Masonic practitioners of the law who may become engaged in cases concerning Masonic organizations and individuals. Illustrious Brother Cerza has done an extensive job of research to provide "precedents" for such lawyers. His documentation makes this booklet valuable "resource material" for the legal library of a Masonic lawyer. His labors have provided a real service to the Craft.

Dr. Cerza is a general practitioner of law; he holds the B.S. degree from Northwestern University and the degree of Juris Doctor from Loyola University in Chicago. For many years he taught classes in the John Marshall Law School; he has authored legal studies like *The Fundamental Principles of Illinois Civil Proceedings* and *Illinois Civil Procedure Cases*.

A prolific writer about Freemasonry, he is probably best known for his book entitled *Anti-Masonry* (Missouri Lodge of Research, 1962), Digests of The Masonic Service Association like *Masonic Biographical Sketches* and *The Truth Is Stranger than Fiction*, and especially for his reviews of Masonic books and periodicals which appear regularly in *The New Age* and *The Philalethes*.

Originally published in 1972, this Digest has been updated and revised by the author and is reprinted in this handy size and format.

S.M.L.P.

INTRODUCTION

Freemasonry and its members are part of the community and both are actively engaged in doing things at all times. It is natural that these activities will from time to time result in disagreements that require the help of the courts in resolving the dispute.

Over the years the courts have been called upon to decide many interesting questions that relate to the Craft and its members. Some of these cases are presented here with the answers given by the courts. The answers, of course, are important; but of equal importance are the reasons given by the courts as well as the general rules which are applied to specific situations. Consequently, in many instances the language of the court is reproduced to show its thinking and how it applied general rules to the specific question presented for decision.

The cases considered are not really "Masonic" cases dealing with Masonic law. They are more properly described as civil cases decided by the courts, in which the Craft had an interest or was involved in some way. In some instances the court took into consideration the rules of law existing within the Craft, but in most instances general rules of law were involved rather than "Masonic law."

It is to be emphasized that although court decisions on the appellate level are used as precedents in later cases, there is no assurance that the decision presented is still the law today. For this reason the date of the cases is indicated. In some instances constitutional provisions and statutes are involved; these may have been changed in the intervening years. The specific case also may have been decided on a special facts or on certain evidence which may be different in a later case. All these factors may bring about a different result in a later case.

There are many cases which have been decided involving other fraternal bodies. There has been no attempt to cover these cases. In a few rare instances such cases have been presented here because there were no analagous cases involving a Masonic group and the question itself was of interest. Presumably, if the association had been a Masonic one, the result would have been the same.

The information after the title of the case is explained as follows: the number is the volume of the official reports where the case appears; the abbreviation is the name of the state; and the abbreviation that follows (if any) is a reference to an unofficial report. For example, Robinson vs. Yates City Lodge, 86 Ill. 598, is explained as follows: The "86" refers to Volume 86 of the reports of the Supreme Court of Illinois; the "Ill." refers to the state where the case was decided; the "598" refers to the page in the volume where the decision appears. If there were after the citation, "24 N.E. 25," the "24" would refer to the volume number, the "N.E." would mean *Northeastern Reporter*, and the "25" would refer to the page in the volume where the opinion appears.

For those who wish to pursue this fascinating subject further, a comprehensive bibliography is given at the end of this Digest.

A.C.

MASONIC QUESTIONS ANSWERED by the COURTS

I. THE NATURE of FREEMASONRY

How has a court described the Craft?

In *Ancient Accepted Scottish Rite vs. Board of County Commissioners*, 122 *Neb.* 586, 241 *N.W.* 93 (1932), a tax case, the court said (pp. 591-592):

"Masonry is traditionally and generally described as a system of morality veiled in allegory and illustrated by symbols. It teaches as a foundation principle faith in God and immortality of the soul. Masonry is not sectarian in its religious teaching. It aims to bring its devotees a deeper and more conscious contact with spiritual things. To the extent that religious purposes include the field of morals, Masonry makes common cause with organized religion. Masonry is tolerant of all faiths and builds a moral and spiritual fellowship on the foundations of fundamental morality common to them. It brings its members to the altar of prayer, and by its very teaching and effort seeks to make real the invisible power of love, the intrinsic worth of harmony, and the beauty and eternal reality of the ideal. Outside of the activity of Masonry which is devoted to charity, which constitutes a very substantial and major part of its endeavors, all of its activities in all of its bodies are devoted to these purposes which fall within the definition of 'education' and 'religion'."

Are the purposes of a Masonic lodge against public policy?

In *Strickland vs. Prichard*, 37 *Vt.* 324 (1864), a Royal Arch Chapter in 1836 (apparently as a result of the anti-Masonic political movement) disposed of its assets, and part of its funds were given to certain trustees of an academy. This suit was filed years later by members of the Chapter to recover the money. One defense raised was that the "objects, practices and organizations are repugnant to, and contrary to the public policy and legislation of this state."

The court said (p. 326): "It is a matter of public history that there was a period of some years, in this state, when among its citizens there was a general distrust of, and hostility to the institution of Freemasonry, and this sentiment became the leading element of the dominant political party of the state. During the ascendancy of this party, all the Masonic charters which had ever been granted by the legislature of this state were repealed, and a law was passed prohibiting the administration of extrajudicial oaths. It was supposed by the party then in power in the state, that they had effectively destroyed the institution in this state and for many years it ceased to have any apparent vitality. Whether the institution deserved all

or any of its censure and unpopularity which it then suffered, we have now but insufficient means of knowing, and perhaps it would hardly be just to accept the legislative indications of those few years as establishing a general legal policy upon the subject."

The court held against the plaintiffs on the ground that they were new members, a new group, and had no claim to the money which belonged to the former association.

Can a lodge sue and be sued in court?

Today most lodges and other groups of Masons are organized as legal entities with the power to sue and be sued. In the early days, however, this was not always true and there are a number of old cases that held that lodges could not sue or be sued as they had no legal existence as a "person" or as an "entity." Some cases are:

Nightingale vs. Barney, 4 *Greene* 106 (*Iowa*, 1853)

Brooks vs. Owen, 200 *Iowa* 1151, 202 *N.W.* 505 (1925)

Cohn vs. Borst, 36 *Hun.* 562 (1885)

A good illustration of a modern case holding that a lodge can sue and be sued is: Ionic Lodge No. 72 vs. Ionic Lodge No. 72 Company, 232 *N.C.* 252, 62 *S.E.* 2d 73 (1950).

To what extent can a court inquire into the affairs of an association of Masons?

In *Rogers vs. Tangier Temple*, 112 *Neb.* 166, 198 *N.W.* 873 (1924), a group of suspended Shriners sought an injunction against Tangier Temple to prevent being excluded from membership and participation in the affairs of the Temple, on the ground that the order of suspension issued by the Imperial Council was void. The court held it had the power to inquire only in the proceedings of the group to ascertain whether the proceedings had been held in conformity with the rules established by the organization and also to protect property rights, if any. Its conclusion, however, was that in this case the members had no personal property right in the funds of the Temple and the injunction was denied.

Is a Grand Lodge regulation valid which requires that the lodge work be conducted only in the English language?

In *Plemenik vs. Prickett*, 37 *N.J. Eq.* 310 (1924), the court held that the arrest of the charter of Schiller Lodge was proper when the lodge reverted to the use of the German language after the end of World War One, in violation of a regulation of Grand Lodge adopted during the war and never repealed.

In a criminal case, is it necessary to prove that Freemasonry is a benevolent or fraternal society?

In *Territory vs. McGrath*, 16 N.M. 202, 114 Pac. 364 (1911), the defendant was prosecuted for maintaining a house of prostitution under a statute which prohibited such activity within 700 feet of "any school, . . . hall of any benevolent or fraternal society"

The court held that no evidence was necessary to show the nature of Freemasonry, and that (p. 366) it would take judicial notice that Freemasonry is a benevolent and fraternal society.

Can the majority of the members of a lodge dissolve it and direct what shall be done with its property?

In *Polar Star Lodge vs. Polar Star Lodge*, 16 La. Ann 53 (1861), the court held invalid a resolution adopted by the majority of the members of a lodge dissolving the organization; the court held that so long as there were enough members to carry on, the lodge could continue to exist.

When a lodge is dissolved, do its property and funds go to the Grand Lodge?

In *United States Savings Bank of Newark vs. Schiller Lodge*, 117 N.J. Eq. 460, 176 Atl. 330 (1935), the court held that in view of the regulations of the Grand Lodge the funds and property of a dissolved lodge went to the Grand Lodge even though the bulk of the members of the lodge had joined another lodge.

Is the securing of a charter from a Masonic-oriented Grand Body a matter of right of privilege? And can objecting members be held liable for damages for opposing the application?

In *Trautwein vs. Harbourt*, 40 N.J. Super. 247, 123 Atl. 2d 30 (1956), the plaintiffs were members of the Order of the Eastern Star; they had applied for a charter of the Grand Body of the state and it had been refused. Suit was filed to compel the defendant officers to issue the charter. The plaintiffs also sought damages. The defendants admitted that some of the plaintiffs were persons of good reputation and that they did not know anything derogatory about the others. On this basis the plaintiffs contended that the refusal to issue the charter was willful and malicious and the court should intervene. The court said (p. 41):

"Fraternal association implies a degree of social intimacy but one step removed from that of the family. So long as this form of social organism remains deeply imbedded in our culture as it is now, the law must respect it and its ordinary concomitants, chief among which is selectivity of membership. Clearly to be implied from the absolutism over admission residing in the organization as an entity is the

derivative right of individual members to be heard within the organization on their objections to an applicant and to persuade other members toward their views. To qualify that right by the peril of liability for punitive damages at the suit of an excluded applicant who can convince a jury that the objecting member was motivated by ill will, spite, or prejudice, would be, in our judgment, to impair commonly accepted concepts of freedom of selectivity in social and fraternal organizations, and, perhaps, in the long run, to foment and exacerbate rather than relieve the kinds of social stresses which lie beneath the present controversy We do not yet live in the age of the literal brotherhood of man. The 'black-ball' continues to hold its place in our fraternal life."

Can a court stop one fraternal group from using a name which is similar to the name of another fraternal group?

In *Grand Lodge vs. Grand Lodge*, 85 *Colo.* 17, 273 *Pac.* 648 (1928), a lodge of negro members adopted a name similar to that of another lodge of negro members. The court held (p. 21), that "the right of a just and regularly constituted lodge of Masons to the exclusive use of such name is one of its most valuable assets."

Will a court enter an injunction against a negro organization using the name and paraphernalia of the Shrine?

The Ancient Egyptian Arabic Order of the Nobles of the Mystic Shrine vs. Michaux, 279 *U.S.* 737 (1929), the United States Supreme Court reversed the decision of the Supreme Court of Texas which had sustained an injunction against the negro group. The decision of the court was based on the fact that the first white Shrine organization was established in 1887; the first negro organization was formed in Texas in 1894. The suit was filed in 1918, and the court took the view that the plaintiff had waited too long before complaining; and therefore, lost the right to the exclusive use of the items. The court observed (p. 747) "that the negro order has held itself out as entirely distinct from the white order and as open only to members of the negro Masonic fraternity. True, there was much imitation, but this is shown in the nature of emulation rather than false pretenses."

Does an incorrect description of the name of a Masonic Home invalidate the provisions of a will?

In *Milligan vs. Greenville College*, 156 *Tenn.* 495, 2 *S.W.* 2d 90 (1928), the court held (p. 92), that the intention of the testator was to make a bequest to the Grand Lodge of Free and Accepted Masons of Tennessee for the benefit of the Widow's and Orphans' Home operated by it

at Nashville, and that the misnomer of the corporation would not invalidate the gift, since the evidence made the intention of the testator quite clear.

Can a court inquire into the validity of an election of officers of a fraternal group?

In *Smith vs. Merriott*, 130 Md. 447, 100 Atl. 731 (1917), a negro member of a Royal Arch Chapter questioned the election of the officers. The court held (p. 452), it "has no power under the facts disclosed by the record to determine in this suit the validity of the defendants' election." The court also said: "None of the Maryland cases cited go to the extent we are asked to go in this case. It is true they have sustained the right of shareholders to enjoin proposed illegal or fraudulent methods in the conduct of election of officers, but none of them have decided or intimated that the power can be used after an election, although irregular or even illegal, to remove those declared elected."

Can a Grand Lodge recover money it loaned to someone if it has not been granted authority to make loans?

In *Grand Lodge of Alabama vs. Waddill*, 36 Ala. 313 (1860), the Grand Lodge had loaned a sum of money to the defendants to be used by the Central Masonic Institute at Selma; the defendants had signed the note as individuals. Suit was filed on the note. The defense interposed was that the plaintiff had no legal authority to loan money. The court observed that the charter of the plaintiff did not have any provision authorizing it to make loans of money. The court held (p. 319): "Contracts of corporations, which they have no power to make, are void, and courts of justice will not enforce them. So, also, promissory notes, and other instruments, given to secure the performance of the contract are void."

Can fraternal organizations provide that its members cannot become members of another group?

In *Eastern Star vs. Klutch*, 144 Md. 491, 125 Atl. 72 (1924), the Grand Chapter had adopted a resolution that prohibited its members from joining the Order of the White Shrine of Jerusalem. The court stated (p. 495), that "The internal policy of the order in regard to qualification for membership shall not be questioned by this court, unless some principle is contravened by the provision now being considered." The court also said (p. 495), "As a member of the Eastern Star, the appellee was bound by the agreement embodied in its constitutions that the Grand Chapter should determine such question as the one she submitted for its decision and which she now seeks to have adjudicated in this suit. The judgment of the tribunal created by the laws of the order should be regarded as final and

conclusive in the absence of any suggestion that the right of the appellee to a fair and regular hearing was not duly protected."

Can the rules of an association provide that membership is predicated on belonging to another group, and that if such membership ends, that the membership in the present group ends?

In *Yeates vs. Roberts*, 7 De G.M. & G. 227, 3 W.R. 461, affd. 3 Drew 170, 1 Jur. (n.s.) 319 (an English case), which involved an Odd Fellow organization, the rules provided that the group was to be composed exclusively of members of the "Loyal Orange Institution of England." The rules also provided for expulsion of one who ceased being a member of the Loyal Orange Institution of England. The member involved in this case was expelled from the Loyal Orange Institution of England. The other organization then notified him that he had been expelled for that reason. He sued for re-investment. The court held he was not entitled to be re-instated as a member.

Can funds held by a Grand Lodge for one purpose be transferred for another purpose?

In *State vs. Toney*, 141 Ore. 406, 17 P. 2d 1105 (1933), the Grand Lodge adopted a resolution to use part of the funds in the educational fund to meet some expenses of the home endowment fund. The court said (p. 1106):

"The protection of quasi public charities and trusts is peculiarly within the inherent powers of a court of equity. These powers are always available to compel the trustees of such trusts to discharge their duties according to the conditions under which they were held."

The court also said (pp 1106-1107):

"The charitable uses designated by the donor of a fund cannot be changed to any other purpose so long as there are objects of such charity or so long as it can be applied to the purpose named."

Can a Grand Lodge be held liable for injuries sustained by a candidate while being initiated?

In *Grand Temple & Tabernacle of Knights and Daughters of Tabor or the International Order of Twelve vs. Johnson*, 135 S.W. 173 (Tex. Civ. App., 1911), the court held that the Grand Body was not liable for the injuries sustained when the harm was done by someone doing something not a part of the ritualistic work. The inference was that the Grand Body might have been held liable if the injuries were sustained while the ritualistic work prescribed by the Grand Body had been compiled with.

This group did not consist of Freemasons but the general principles announced and applied might be applicable. Suit was filed to recover damages for injuries sustained during a Shrine ceremony in *Thomas vs. Dunne*, 131 Colo. 20, 279 Pac. 2d 427 (1955). The court ruled in favor of the individual defendants but sustained a substantial judgment against the Shrine Temple.

Is a statute valid which prohibits secret societies and exempts from its operation lodges, chapters, commanderies, consistories, councils, temples, posts, etc.?

Yes. Such a statute was enacted by the New York legislature in 1923. The statute was held valid in *The People ex rel Bryant vs. Zimmerman*, 241 N.Y. 405 (1926), and in 279 U.S. 737 (1929).

What are Masonic Temples used for?

In *Cook County Masonic Temple Association vs. The Department of Revenue*, 104 Ill. App. 3rd 658 (1982), a tax case, the Craft was described as follows:

"It is undisputed that the Masons raise and spend millions of dollars each year to operate their charitable organizations.

"Each temple is used for the periodic meetings of the individual organization that owns it. One important purpose of these meetings is to foster the high ideals and morals of Masonry. The first and last parts of these meetings are rituals having a religious tone. The meetings are often used to admit new members who have completed the three required stages of study in Masonic principles. Potential members are often tested to determine whether they have completed the studies for each stage leading to membership.

"The most important business of each temple, discussed at each meeting, is the raising of money for charitable activities. The Masons not only support their own established charitable organizations but also respond to one-time requests for charitable contributions from other local, State, or national organizations."

II. MEMBERSHIP

Is membership in a Masonic association a matter of right or privilege?

The general rule is set forth in 4 *Am. Jur.* 462 (a legal encyclopedia) as follows:

"Membership in a voluntary association is a privilege which may be accorded or withheld, and not a right which can be gained indepen-

dently and then enforced. The courts cannot compel the admission of a member into such an association, and if his application is refused, he is entirely without legal remedy, no matter how arbitrary or unjust may be his exclusion."

Can the members of a lodge vote to dissolve the lodge and then divide the lodge funds?

In *Drake vs. Fuller*, 9 N.H. 536 (1838), the court held that the members could vote to dissolve the lodge. The court said (p. 539):

"The by-laws of the lodge appropriate its funds in promoting 'the good of the Craft, or for relief of indigent and distressed worthy Masons, their widows and orphans.'

The good of the Craft can only be understood to mean the furtherance of the general cause of Freemasonry; and this surely cannot have been effected by abandoning the institution entirely, and dividing its ancient funds among a few acting members; neither can it be contended that such distribution was made for the relief 'of indigent and distressed worthy Masons, their widows and orphans.' "

The court observed that a dissolution cannot be prevented, but then went on to say (p. 540):

"The association may be dissolved, but the trust fund is not therefore, to be either distributed or abandoned. It is an established maxim of equity, that no trust shall fail for want of a proper trustee. The funds of this and any other charitable institution, may, therefore, be saved to carry out the original purposes and wishes of the donors or contributors."

In *Polar Star Lodge vs. Polar Star Lodge*, 16 La. Ann. 53 (1861), and also in *Curien vs. Santini*, 16 La. Ann. (1861), the court held that a majority of the members of a group cannot vote to dissolve the organization so long as there are a sufficient number of members to continue the purpose for which the group was formed.

Does a Mason have a property right in the assets of the Craft?

In *Franklin vs. Burhan*, 40 Misc. Rep. 566, 82 N.Y.S. 882 (1903), a member had charges filed against him at a time when two indictments were pending against him based on the same facts. He sought an injunction on the ground that he would be prejudiced in the trial of the criminal case if compelled to try the Masonic offense first, and that the charges took away his property rights without due process of law.

The court held (p. 883), "The Masonic fraternity is a voluntary organization. It has a constitution and code of procedure designed for its government and for the regulation of its members in their relation to one

another. A member of the Masonic fraternity has no right in the property of the organization, except that, while a member in good standing, he may enjoy the use of the same in a manner prescribed by said organization."

Can an expelled Mason sue the lodge and recover his initiation fee?

In *Robinson vs. Yates Lodge No. 448*, 86 Ill. 598 (1877), the court held the fees could not be recovered, saying (p. 600):

"Our decision, however, is based exclusively on the ground that the money sued for was voluntarily paid, without fraud or imposition by the defendant in error to induce the payment, and the defendant being a purely voluntary association, and not organized for pecuniary profit, we will not interfere with the enforcement of its by-laws."

Can members who withdraw from a corporate Masonic organization and united with another group secure the funds of the original organization?

In *Smith vs. Smith*, 3 Dess. 559 (1817, S.C.), the officers of the "Modern" Grand Lodge and the "Ancient" Grand Lodge met, settled their differences, and decided to unite by forming another Grand Lodge as a "voluntary association." In implementing the settlement certain disagreements arose. Suit was filed by the new group to secure the funds of an original group. The court in a long and detailed opinion considered the Landmarks of the Craft, as well as other authorities, and concluded, on the basis of general principles of state law, that the plaintiffs had no standing in court, that the original organization was still in existence, and that the new group was not entitled to the funds.

Can a statute make it a crime for a non-member to wear the emblem of a fraternal organization?

In *Hammer vs. State*, 173 Ind. 199 (1909), the court held such a statute valid, saying (pp. 205-206):

"It is a matter of common knowledge that the membership in most, if not all, societies or organizations whether secret or otherwise, is the result of fitness and selection, which gives members standing and character, at least among their fellows, and to a greater or lesser degree with the public, and he who wears a badge or emblem of the order or society without being a member holds himself out to the public and to actual members as guilty of a false personation. It is of itself a deceit and a false pretense, and its object could be nothing else than deception, with possible ulterior motives. It is evidence of the first act of an imposter in the course of a premeditated design to prey upon those who, from fraternal, charitable or sympathetic motives, become victims of false personation, imposition and fraud,

whether members of the society or not, and the object of the statute was the prevention of this species of fraud, not only in the interest of the members of the society, but of the public at large, who might be deceived through their good opinion of the society and its members. It is a police regulation, pure and simple, upon grounds of public policy, directed against false personation and false pretenses of that particular kind. False pretenses need not be words. At common law, cheats,' not amounting to a felony, are such as are effected by deceitful or illegal symbols or tokens which may affect the public at large, and against which common prudence could not have been guarded, to the injury of one in some pecuniary interest."

This decision was followed in *State vs. Turner*, 183 *Kans.* 469, 328 *Pac.* 2d 733 (1958).

But in *State vs. Holland*, 37 *Mont.* 392 (1908), the court held a statute on this subject unconstitutional. The statute had several defects; one was that the wives, daughters, sisters, and mothers of members were exempt from the prohibition.

It is worthy to note, however, that several years later Montana adopted a statute without these objectionable features. (*Revised Codes of Montana*; 1926; 77-412 (1410)).

In *Commonwealth vs. Martin*, 35 *Pa. Super. Ct.* 241 (1908), a conviction was upheld under a law making it a misdemeanor for any person "to wear or use . . . any emblem, button, device, or insignia . . . of any secret, fraternal association. . . ."

Can a member be expelled for belonging to a non-approved organization?

In *Lawson vs. Hewell*, 118 *Cal.* 613 (1897), a Royal Arch Chapter had a rule prohibiting its members from belonging to another group, and the penalty for violating the rule was expulsion. Charges were filed against a member who had violated the rule and suit was filed to prevent trial on the charges. The court said (p. 618):

"Individuals who associate themselves in a voluntary fraternal organization may prescribe conditions upon which membership in the association may be acquired, or upon which it may continue, and may also prescribe rules of conduct for themselves during their membership, with penalties for their violation, and the tribunal and mode in which the offenses shall be determined and the penalty enforced."

The court also said (p. 620):

"Whether it is for the best interests of the order that its members shall not belong to any other orders than those named in the resolutions adopted by the Grand Chapter, or whether membership in the Ancient and Accepted Scottish Rite of the United States jurisdiction is contrary to the best interests of Royal Arch Masonry, are questions

pertaining solely to the internal economy of the order, and are purely of Masonic cognizance. Courts have no standard by which to determine the propriety of the rule, and are not competent to exercise any function in the matter."

What is the result of suspension of membership in a fraternal group on a member's status in a related group?

In *Commonwealth vs. O'Donnell*, 188 Pa. 14 (1898), the court said (p. 20): "When therefore the relator was suspended . . . from Excelsior Mark Lodge No. 216, he was by the constitution of the Grand Chapter suspended ipso facto from Palestine Royal Arch Chapter No. 240, which body he had heretofore represented in the board of managers of the Masonic Home."

Does a court have the power by injunction to prevent a Grand Master from hearing charges against a Master of a lodge?

In *Mead vs. Sterling*, 62 Conn. 576 (1892), the Worshipful Master of a lodge had been served with a summons to appear before the Grand Master and show cause why he should not be suspended from office for making misrepresentations of statements of the Grand Master at a lodge meeting. The Worshipful Master filed suit seeking an injunction to prevent the hearing. The court assumed that the Grand Master had the power to proceed in the manner in which he was acting as this power was not specifically questioned. On this basis the court held that it could not interfere on the ground that the members of an organization cannot seek the help of a court until they have exhausted all the remedies within the organization itself.

Can an expelled Mason be re-instated after his death?

In *Connelly vs. Masonic Mutual Benefit Association*, 58 Conn. 552 (1890), the widow of a deceased Mason filed suit to recover insurance benefits under a certificate which required continued membership in good standing in Freemasonry for its validity. The decedent had been suspended from his lodge; but an investigation had been made and the action suspending him had been held void since the summons issued by the lodge did not conform to the requirements of Grand Lodge. He was ordered re-instated and the action was sustained by the Grand Lodge. The court held that the widow could recover the amount due under the certificate even though the defendant argued that the re-instatement could not have taken place after the assured had died.

Can a court order the re-instatement of an expelled Mason?

In *Kopp vs. White*, 65 N.Y.S. 1917 (1900), suit was filed against the Grand Lodge of New York to compel the re-instatement of a member ex-

pelled for unMasonic conduct. The court stated (p. 1019) that the only question to be considered by the court was "whether the plaintiff here has been expelled in accordance with the laws governing the organization of which he is a member."

The court also said (p. 1021):

"When the plaintiff became a Mason he submitted himself to the government of the order, as prescribed by its constitution and by-laws. Whatever right he obtained, he obtained from the society itself. He held these rights subject to the laws of the governing body, and to no other. He was bound to conduct himself in accordance with the rules and laws of the society, and he knew that, if he failed so to conduct himself, he was amenable to the court established by the organization itself."

Will a court prevent a trial of charges filed against a member of a Royal Arch Chapter?

In *Lawson vs. Hewell*, 118 Cal. 613 (1897), the court refused to interfere in the matter, saying (pp. 618-619):

"Individuals who associate themselves in a voluntary fraternal association may prescribe conditions upon which membership in the association may be acquired, or upon which it may continue, and may also prescribe rules of conduct for themselves during their membership, with penalties for their violation, and the tribunal and mode in which the offenses shall be determined and the penalty enforced. These rules constitute their agreement, and unless they contravene some law of the land are regarded in the same light as the terms of any other contract. Organizations of this character are not recognized as legal bodies, or as entitled to recognition in courts as to the enforcement of their rules, unless there is also involved the determination of some civil right, or some right of property, and in these cases are limited to inquiring whether the rules prescribed by the organization for the determination of the right have been followed. In all matters of policy, or of the internal economy of the organization, the rules by which the members have agreed to be governed constitute the charter of their rights, and courts will decline to take cognizance of any matter arising under these rules. Whether the rules have been violated, or whether a member has been guilty of conduct which authorizes an investigation by the association or the imposition of the penalty prescribed by it, and, if the investigation is in accordance with its rules, the party charged has no ground of complaint, since it is but carrying into effect the agreement he made when he became a member of the association."

Can a Grand Master issue an edict directing the members from having Masonic intercourse with an organization which the Grand Lodge has determined to be illegitimate?

In *Bayliss vs. Grand Lodge of the State of Louisiana*, 131 *La.* 579, 59 *So.* 996 (1912), the court held that the defendants were not liable for damages for prohibiting its members from joining a Cerneau group. The court said (pp. 606-607):

"It is clear that, as between itself and its constituents (the Blue Lodge and the members thereof), the Grand Lodge was within its rights in enacting the law to which we have referred, for the Grand Lodge is a legislative body, created by, and of those constituents, and the law in question was made by them, through their representatives, to be applied to themselves. It was competent for them, in that way and to what extent, to ordain that, as to their organization, any other body claiming to affiliate or fraternize with them, and particularly one introduction into which requires, in some measure, the use of their signs, words, or symbols, is bogus, spurious, and clandestine . . . The occasion when the edicts were issued, whether their issuance be regarded as that of the Grand Master alone, or of the Grand Lodge acting through him, was, therefore, for both reasons, one of qualified privilege, and the only question left was whether the language of the edicts exceeded the privilege which the occasion afforded, and inflicted upon plaintiff wanton and needless injury."

Is a member charged with unMasonic conduct entitled to reasonable notice of the charges in accordance with the rules of the organization?

In *Universal Lodge vs. Valentine*, 134 *Md.* 505, 107 *Atl.* 531 (1919), the court held (p. 515):

"Where it is shown that the proceedings instituted against a member of an association have been conducted in accordance with the prescribed rules of procedure in such cases, and that in violation of such rules, he has been given no opportunity to appear and defend himself before the tribunal which is to hear and determine the charges preferred against him, the court when called upon will not hesitate to interfere in his behalf against the invasion of such rights, if it be shown that he has exhausted the remedies furnished by the association."

The same court in *Evans vs. Brown*, 134 *Md.* 519 (1919), held that a court will prevent the expulsion of a Mason where charges have been filed but no sufficient opportunity was afforded the member to defend himself against such charges, especially where the Grand Lodge Constitutions do not provide for a review by the Grand Lodge.

Can a court direct the re-instatement of a Mason who was expelled without complying with the rules of the Grand Lodge?

In the *Worshipful Grand Lodge vs. Lee*, 128 Md. 42, 96 Atl. 872 (1916), the court ordered a member re-instated, saying (p. 49):

"In matters of discipline, doctrine and internal policy of the organization the rules by which members have agreed to be governed constitute the charter of their rights and courts will decline to take cognizance of any matter arising under these rules. Whether the rules have been violated, or whether a member has been guilty of conduct which authorizes investigation by the association, or the imposition of the penalty prescribed by it, is eminently fit for the association to determine, and, if the investigation is in accordance with its rules, the party charged has no ground of complaint, since it is but carrying into effect the agreement he made when he became a member of the association. . . . But where, as in this case, it is shown that the proceedings instituted against him have not been conducted in accordance with the prescribed rules of procedure in such cases, and that in violation of such rules he has been given no opportunity to appear and defend himself before the tribunal which is to hear and determine the charges preferred against him, the court when called upon will not hesitate to interfere in his behalf against the invasion of such rights."

Can a member of a fraternal body be charged with one offense and then tried on another?

In *Everson vs. Order of the Eastern Star of New York*, 265 N.Y. 112, 191 N.E. 854 (1934), the court held (p. 856), that "a member cannot be charged with one offense and tried for another without his consent or acquiescence."

Can a member of a Masonic lodge who has been subjected to discipline seek the aid of a court before he has exhausted all procedures provided by the Craft?

In *Worshipful Grand Lodge vs. Lee*, 131 Md. 681, 103 Atl. 88 (1918), the court held that a member subjected to discipline cannot seek the aid of a court until he has taken an appeal according to the rules of the Craft.

In *Braden vs. Lewis*, 142 La. 88, 88 So. 117 (1921), a member of a negro lodge sought a writ of mandamus to be re-instated as a member in good standing. The court held (p. 118): "Until the lodge has acted, the remedies within the order had not been exhausted, and the plaintiff had not put himself in a position to appeal to the courts."

Can a court stop the holding of a trial of a member of a fraternal group?

In *Smith vs. Merriott*, 130 Md. 447, 100 Atl. 731 (1917), a negro of a Royal Arch Chapter sought to stop a trial on charges filed against him. The court said (p. 453), "The Grand Chapter has not tried and determined the charges against the appellant. What it may do as a result of its investigation we do not know and cannot anticipate. He is entitled to a fair and impartial trial and it is to be presumed that the Chapter will give him such a trial. But if the trial should be characterized by bad faith, malice, or manifest unfairness it would become a subject of judicial review by the court, which would restore any rights of the appellant of which he had been wrongfully deprived."

Will a court issue an injunction preventing a trial on charges filed against a member of a Masonic lodge because he contends that the trial commissioners are biased and prejudiced?

In *Franklin vs. Burhans*, 40 Misc. Rep. 566, 82 N.Y.S. 882 (1903), the court said (p. 884):

"So far as appears, the proceedings against him in the Masonic order are in strict accordance with the ordinary course of procedure of that body. . . . The plaintiff voluntarily became a member thereof, and in so doing submitted himself to the customs and laws of the organization, and for any alleged infraction of these customs or laws by plaintiff it is his duty to stand trial in the forum constituted by the organization, and at the time and in the manner it prescribes."

Will a court enter an injunction against one holding himself or herself out as an officer of an organization?

In *Grand Chapter of Order of Eastern Star vs. McRobinson*, 147 La. 64, 84 So. 495 (1920), it was claimed that (p. 66) "The defendant is holding herself out to be the Grand Matron of its Chapter, whereas Mary P. Reed it is alleged was elected to that position at a regular annual session of the corporation. . . ." The injunction was refused on the ground that there was no showing that the case was based on any pecuniary value and therefore the court had no jurisdiction to hear the matter.

Can an expelled member be compelled by a court to turn over securities and records belonging to the lodge?

In *Yeates vs. Roberts*, 7 De G.M. & G. 227; 3 W.R. 461; affd. 3 Drew 170; 1 Jur. (N.S.) 319, a case involving an Odd Fellows Lodge, the court held that a former member was legally bound to return the securities and documents, and that his contention that he had been improperly expelled could not be considered. This was a case decided in England.

In *Smith vs. Merriott*, 130 Md. 447, 100 Atl. 731 (1917), a former of-

ficer of a Royal Arch Grand Chapter refused to turn over a bank book; charges were filed against him. He contended that the current officers had not been properly elected. The court held (p. 733): The defendants have been elected and installed as the officers of the Grand Chapter, and are exercising the functions and powers of their respective officers. . . . This court has no power under the facts disclosed by the record to determine in this suit the validity of the defendants' election."

Can a court stop the hearing of charges filed against a Mason because he contends that he will be prejudiced in a criminal case pending against him which involve the same facts?

In *Franklin vs. Burhans*, 40 Misc. 566, 82 N.Y.S. 882 (1903), a Mason had a criminal case pending against him for libel. Charges were filed against him before his lodge based on the same incident covered by the criminal case. He filed suit to stop the hearing before the Masonic tribunal, claiming it would prejudice his criminal case. The court said (p. 884):

"The claims of the plaintiff that the defendants are conspiring against him, and that he believes the Masonic charges were preferred and the trial thereof sought to be had for the purpose of affecting, to his prejudice, the trials of the criminal cases, are not supported by the proofs before me. So far as appears, the proceedings against him in the Masonic order are in strict accordance with the ordinary course of procedure by that body. It is the province of all courts constituting the civil judiciary to take cognizance only of those rights which flow from the common law, legislative enactments, political constitutions, and international treaties. The right to membership in the Masonic fraternity springs from no one of these sources. Membership therein confers no legal right of which a court of equity will take cognizance The Masonic fraternity is an unincorporated society, which has customs and laws of its own. The plaintiff voluntarily became a member thereof, and in so doing submitted himself to the customs and laws of the organization, and for any infraction of these customs and laws by the plaintiff it is his duty to stand trial in the forum constituted by the organization, and at the same time, and in the manner it prescribes."

If an officer uses lodge funds to pay a personal debt, can the lodge recover the money so paid from the person receiving the money?

In *Washbon vs. Hixon*, 87 Kan. 310, 124 Pac. 366 (1912), the Grand Treasurer had issued a Grand Lodge check, signed it as such officer, and used the check to pay a personal obligation which he owed the defendant.

When this came to light, suit was filed by the Grand Master and the Grand Lodge to recover the money claimed to have been improperly paid. The court held that the check on its face clearly showed that funds of the Grand Lodge were being transferred and that the defendant was, therefore, on notice that the personal obligation could not be paid with these funds.

III. FREEMASONRY and TAXATION

The case on taxation connected directly and indirectly with the Craft are many and varied because of many factors. The areas that involve the Craft are real estate taxes, estate taxes, inheritance taxes, gift taxes, income taxes, and possible occupational taxes. There is no uniformity in the court decisions because the local statutes and constitutional provisions are not the same everywhere. Cases very often hinge on the evidence presented; this sometimes accounts for cases in a specific state which hold both ways on the same subject.

The following decisions are given solely as a guide in starting a study of the subject in a specific state. Most of the cases are concerned with real estate taxes and whether the local law exempts the property involved in the case. In some instances where the real estate is used partly for Masonic purposes and partly for commercial purposes the court has exempted part of the structure.

In making a study of this subject one must not overlook cases relating to other fraternal groups in the state, as the facts may be analogous and the application of the rule may apply to the Craft. It is also to be remembered that the statute involved in a case may have been changed since the decision of the court; this may cause the decision to be no longer applicable.

CASES HOLDING MASONIC BODY NOT SUBJECT to TAX

- ALABAMA: Ware Lodge vs. Harper, 236 *Ala.* 334, 132 *So.* 59 (1938)
- COLORADO: Horton vs. Colorado, Springs Masonic Building Society, 64 *Colo.* 529, 173 *P.* 61 (1918)
- Commissioners vs. Masonic Association, 80 *Colo.* 183, 250 *Pac.* 147 (1926). Masonic park.
- El Jebel Shrine Association vs. McGlone, 93 *Colo.* 334, 26 *Pac.* 2d 108 (1933)
- FLORIDA: State ex rel Cragor vs. Jones, 150 *Fla.* 486 (1942)
- Rogers vs. City of Leesburg, 157 *Fla.* 785 (1946)
- Simpson vs. Bohon, 159 *Fla.* 280 31 *So.* 2d 406 (1947).
 But held that rented portion of building was not exempt.
- GEORGIA: The Mayor vs. Solomon's Lodge, 53 *Ga.* 93 (1874)

- Massenberg vs. Grand Lodge, 81 *Ga.* 212 (1888)
Portions used for stores not exempt.
- ILLINOIS: Grand Lodge vs. Board of Review, 281 *Ill.* 480,
117 *N.E.* 1016 (1917). Old folks' home.
The People vs. Freeport Masonic Temple, 347 *Ill.*
180, 179 *N.E.* 672 (1931). (Expressly overruled in
359 *Ill.* 593, 596).
Cook County Masonic Temple Association vs.
Department of Revenue of the State of Illinois, 104
Ill. App. 3rd 658, 432 *N.E.* 2d 1240 (1982); petition
for leave to appeal denied in 91 *Ill.* 2d 57.
- INDIANA: City of Indianapolis vs. Grand Master, 25 *Ind.* 518
(1865)
- IOWA: In Wilson's Estate, 145 *Iowa* 514, 124 *N.W.* 316
(1910)
- KANSAS: Masonic Home vs. Sedgwick County, 81 *Kans.* 859,
87 *N.E.* 602 (1910). Eastern Star Home.
Clements vs. Ljungdahl, 161 *Kans.* 274 (1946)
- MAINE: Everett vs. Carr, 59 *Me.* 325 (1871)
Marsh River Lodge vs. Brooks, 61 *Me.* 585 (1873)
- MARYLAND: Appeal Tax Court vs. Grand Lodge, 50 *Md.* 421 (1878)
Mayor vs. Grand Lodge, 60 *Md.* 280 (1883)
- MASSACHUSETTS: Masonic Education and Charity Fund vs. Boston,
201 *Mass.* 320, 87 *N.E.* 602 (1909). Bequest to
maintain Masonic Home.
- MISSOURI: Fitterer vs. Crawford, 157 *Mo.* 10, 206 *S.W.* 2d 340
(1947)
Burroughs Estate, 357 *Mo.* 10, 206 *S.W.* 2d 340 (1947)
- NEBRASKA: Plattsmouth Lodge vs. Cass County, 133 *Neb.* 589
(1937) and 135 *Neb.* 48 (1938)

- NEW JERSEY: Newark vs. State Board of Taxes, 9 *N.J.M.* 599, 155 *Atl.* 9 (1931)
- NEW MEXICO: Temple Lodge No. 6 vs. Tierney, 37 *N.M.* 178, 20 *P.* 2d 280 (1933)
- NEW YORK: People vs. Farrell, 130 *Misc.* 142, 223 *N.Y.S.* 660 (1927)
People vs. Miller, 164 *Misc.* 726; affirmed 279 *N.Y.* 137 (1937)
People vs. Wells, 179 *N.Y.* 257, 71 *N.E.* 1126 (1904). Inheritance tax case.
Allen's Estate, 136 *N.Y.S.* 327 (1912). Inheritance tax case.
In re Hiteman's Estate, 180 *N.Y.S.* 880 (1920). Inheritance tax case.
- NORTH DAKOTA: State vs. Packard, 35 *N.D.* 298, 160 *N.W.* 150 (1916)
- OHIO: Tax Commission vs. Security Savings Bank & Trust Co., 117 *Ohio St.* 443, 159 *N.E.* 570 (1927). Inheritance tax case.
- OKLAHOMA: State vs. Bartlesville Lodge 168 *Okla.* 416, 33 *Pac.* 2d 507 (1934)
- SOUTH CAROLINA: State vs. Addison, 2 *S.C.* 499 (1871)
- SOUTH DAKOTA: Scottish Rite Temple Association vs. County, 62 *S.D.* 204, 252 *N.W.* 626 (1934)
- TENNESSEE: Cumberland Lodge vs. Nashville, 127 *Tenn.* 248, 154 *S.W.* 1141 (1912)
- VIRGINIA: City of Richmond vs. Grand Lodge of Virginia, 162 *Va.* 471, 174 *S.E.* 846 (1934)
- WEST VIRGINIA: Masonic Temple Society vs. State of West Virginia, 90 *W. Va.* 441, 111 *S.E.* 637 (1922)
- WISCONSIN: Thronson's Estate, 243 *Wis.* 73, 9 *N.W.* 2d 641 (1943). Inheritance tax case.

WYOMING: Hardin vs. Rock Springs Lodge, 23 *Wyo.* 522, 154
 P. 323 (1916)

CASES HOLDING MASONIC BODY SUBJECT TO TAX

ARIZONA: Conrad vs. Maricopa County, 40 *Ariz.* 390, 12 *P.* 2d
 613 (1932)

ARKANSAS: Grand Lodge vs. Taylor, 146 *Ark.* 316, 226 *N.W.* 129
 (1921)

COLORADO: Creel vs. Pueblo Masonic Building, 100 *Colo.* 281,
 68 *P.* 2d 23 (1937)

 City of Denver vs. George Washington Lodge Asso-
 ciation, 121 *Colo.* 470, 217 *P.* 2d 617 (1950).
 Involved vacant lot intended to be used for lodge
 building.

CONNECTICUT: Masonic Building Association vs. Town of Stamford,
 119 *Conn.* 53, 174 *Atl.* 301 (1934)

GEORGIA: Atlanta Masonic Temple Co. vs. City of Atlanta, 162
 Ga. 244, 133 *S.E.* 864 (1926).

ILLINOIS: People vs. Dixon Masonic Building Assn., 348 *Ill.* 593,
 181 *N.E.* 434 (1932)

 People vs. Rockford Masonic Temple Building Assn.,
 348 *Ill.* 567, 181 *N.E.* 428 (1932)

 Schureman's Estate, 8 *Ill.* 2d 125, 133 *S.E.* 2d 7
 (1956). Legacy to Masonic Temple Association held
 subject to inheritance tax.

IOWA: Lacy vs. Davis, 112 *Iowa* 106, 83 *N.W.* 784 (1900).
 Knights Templar summer home.

KANSAS: Mason vs. Zimmerman, 81 *Kans.* 799, 106 *P.* 1005
 (1910)

 Masonic Temple Assn. vs. Rhoades, 132 *Kans.* 646,
 296 *P.* 734 (1931)

 Clements vs. Ljungdahl, 161 *Kans.* 274, 167 *P.* 2d
 603 (1946)

- KENTUCKY: Commonwealth vs. Masonic Temple Co., 87 *Ky.* 349, 8 S. W. 699, and 89 *Ky.* 658, 13 S. W. 121 (1910)
- Vogt vs. City of Louisville, 173 *Ky.* 119, 190 S. W. 695 (1917)
- City of Newport vs. Masonic Temple Assn., 108 *Ky.* 333, 56 S.W. 405 (1900)
- Masonic Temple Co. vs. Commonwealth, 11 *Ky. L.R.* 383, 12 S.W. 143 (1889)
- Masonic Temple Co. vs. Pflanz, 21 *Ky. L.R.* 583, 52 S.W. 821 (1899)
- LOUISIANA: State vs. Board, 34 *La. Ann.* 574 (1882). Held building rented to others was not exempt.
- Grand Lodge of Masons vs. City of New Orleans, 44 *La. Ann.* 659 (1892). Later case in 46 *La. Ann.* 717, 15 *So.* 296, 166 *U.S.* 136 (1897).
- MAINE: Bangor vs. Rising Virtue Lodge, 73 *Me.* 428 (1882)
- Thirkel vs. Johnson, 150 *Me.* 131, 107 *Atl.* 2d 489 (1954). Inheritance tax case.
- MacDonald vs. Stubbs, 145 *Me.* 235, 49 *Atl.* 2d 765 (1946). Bequest to pay Grand Lodge dues held subject to inheritance tax.
- MARYLAND: Appeal Tax Court vs. Grand Lodge, 50 *Md.* 421 (1878)
- Baltimore vs. Grand Lodge, 60 *Md.* 280 (1883)
- MASSACHUSETTS: Worcester Masonic Charity & Educational Association vs. Assessor, 326 *Mass.* 409 (1950)
- MacGregor vs. Commissioner, 327 *Mass.* 484, 99 *N.E.* 2d 468 (1951)
- Old Colony Trust Co. vs. Commissioner, 331 *Mass.* 329, 119 *N.E.* 175 (1954). Legacy to lodge held not exempt, but legacy to other groups held exempt from inheritance tax.
- MICHIGAN: Attorney General vs. Detroit Common Council, 113 *Mich.* 388, 71 *N.W.* 632 (1897).
- MISSISSIPPI: Senter vs. City of Tupelo, 136 *Miss.* 269, 101 *So.* 372 (1924)

- MISSOURI: The State vs. Central St. Louis Masonic Hall Assn.,
14 *Mo. App.* 596 (1893).

Trustees of Trenton Lodge vs. Crawford, 157 *Mo.* 51,
57 *S.W.* 532 (1900).
- NEBRASKA: Mt. Moriah Lodge vs. Otoe, 101 *Neb.* 274, 162 *N.W.*
639 (1917)

Scottish Rite Bldg. Co. vs. Board, 122 *Neb.* 586, 241
N.W. 93 (1932)

Masonic Temple Craft vs. County, 129 *Neb.* 293, 261
N.W. 569 (1935)

Masonic Craft vs. Board, 125 *Neb.* 841, 252 *N.W.*
313 (1934)

McDonald vs. Masonic Temple Craft, 133 *Neb.* 389
276 *N.W.* 176 (1937). Held that part of building
used for Masonic purposes was exempt.
- NEW JERSEY: City of Trenton vs. Trenton Masonic Temple Assn., 8
N.J. Misc. 778 (1930), *affd.* 108 *N.J.L.* 419 (1931),
151 *Atl.* 753.

Newark vs. State Board, 9 *N.J.M.* 599, 155 *Atl.* 9
(1931)

Trenton Masonic Temple Assn. vs. City of Trenton,
108 *N.J.L.* 419, 158 *Atl.* 395 (1932)

Alpine Masonic Temple Association vs. State Board of
Appeals, 15 *N.J.M.* 275, 190 *Atl.* 782 (1937).
- NEW YORK: The People vs. Miller, 164 *Misc.* 726, 279 *N.Y.* 137
(1937)

The People ex rel Troy Masonic vs. Bryne, 210 *N.Y.S.*
527 (1925)

The People vs. Breder, 201 *N.Y.S.* 291 (1923)

People vs. Clark, 210 *N.Y.S.* 360 (1925)

People vs. Ostrander, 105 *Misc.* 405, 173 *N.Y.S.* 356
(1918)

People vs. White, 217 *N.Y.S.* 657, 244 *N.Y.* 564, 155
N.E. 898 (1927).

- NEW YORK: People vs. Betz, 114 *Misc.* 124, 185 N.Y.S. 538 (1921)
 (cont'd).
- People vs. Miller, 164 *Misc.* 726, 279 N.Y. 137 (1937)
 Plattsburg Lodge vs. Laravie, 238 N.Y.S. 327 (1929)
 People vs. Goldfoyle, 241 N.Y.S. 328 (1929)
 Syracuse Masonic Temple, 270 N.Y. 8 (1936)
 German Masonic Temple Assn. vs. City of New York,
 279 N.Y. 452 (1929)
- OHIO: Application of Cincinnati Masonic Temple, 94 N.E.
 2d 244 (1950). Restaurant equipment used by lodge
 not exempt from tax.
- Tax Commissioner vs. Security Savings Bank, 117
 Ohio St. 443, 159 N.E. 570 (1929)
- PENNSYLVANIA: Philadelphia vs. Masonic Home of Pennsylvania, 160
 Pa. 572 (1894)
- Philadelphia vs. Masonic Home, 33 Pa. Super. 382
 (1907)
- SOUTH CAROLINA: State vs. Addison, 2 S.C. 499 (1871)
- SOUTH DAKOTA: Masonic Aid Association vs. Taylor, 2 S.D. 324, 50
 N.W. 93 (1891). Insurance benefit association not
 exempt.
- TEXAS: Morris vs. Lone Star Chapter, 68 Tex. 698, 5 S.W.
 519 (1887)
- City of Houston vs. Scottish Rite Benevolent Assn. 111
 Tex. 191, 230 S.W. 978 (1921)
- Masonic Temple Assn. vs. Amarillo Independent
 School District, 14 S.W. 2d 128 (1928).
- VERMONT: Grand Lodge of Masons vs. Burlington, 84 Vt. 202, 78
 Atl. 973 (1911)
- Grand Lodge vs. Burlington, 104 Vt. 515, 162 Atl.
 368 (1932)
- WEST VIRGINIA: In re Masonic Temple Soc., 90 W. Va. 441, 111 S.E.
 637 (1922)

State vs. McDowell Lodge, 96 W. Va. 611, 123 S.E. 561 (1924)

WISCONSIN: Silverthorn's Estate, 274 Wis. 453, 80 N.W. 2d 430 (1957). Inheritance tax case.

FEDERAL TAX CASES:

First National Bank in Dallas vs. Commissioner of Internal Revenue, 45 F. 2d 509 (1930). Bequest to certain York Rite and Scottish Rule bodies held subject to estate tax.

Levey vs. Smith, 103 F. 2d 643 (1939). Bequest to Scottish Rite held subject to estate tax.

Masonic Country Club vs. Holden, 12 F. 2d 951 (1926). Stock sold to members of club held subject to excise tax; but the ruling was reversed in 18 F. 2d 553 (1927).

Grand Lodge vs. New Orleans, 166 U.S. 143 (1896). Held that a statute exempting a Masonic building from taxation was not a contract and that the legislature at a later date could change that statute.

Is the building in London known as Freemasons' Hall, which is owned and occupied by the Grand Lodge, exempt from taxation?

In United Grand Lodge vs. Holborn Borough Council, 3 All Eng. Law Rep. 281 (1957), the court held that the building was not exempt from taxation. The statute involved exempted organizations "whose main objects are charitable" or "concerned with the advancement of religion." The court held that the purpose of the groups using the building was to promote Freemasonry and to co-ordinate the work of the various lodges. The court observed that the Craft did much benevolent work; and it also observed that the Craft seeks to improve the individual member. The court held that to "advance religion" means to promote it and to spread its message. Freemasonry does not do this; on the other hand, its rules prohibit the discussion of religion at its meetings, the court observed in arriving at its conclusion.

IV. MISCELLANEOUS

Can children in a Masonic Home which is exempt from taxation be barred from being students in the local public schools?

In *Ashley vs. Board of Education*, 275 Ill. 274 (1916), the court held (pp. 278-279):

"The right to attend school is not limited to the place of legal domicile. A residence, even for a temporary purpose, in a school district is sufficient to entitle children of school age to attend school.

"The only requirement, so far as residence is concerned, is dwelling in the school district. Every child of school age in the State is entitled to attend the public schools of the district in which it actually resides for the time being, whether that be the place of his legal domicile or the legal domicile of its parents or guardian, or not."

Is it proper in a criminal prosecution for the state's attorney to say that there are some good Masons on the jury?

In *Craven vs. the State*, 22 Ala. App. 39, 111 So. 767 (1927), the court held the "argument was highly improper and directly repugnant to the rules of law governing legitimate argument."

Can a Mason refuse to testify in a case relative to a matter which he states was told to him in confidence by a brother Mason?

In *Owen vs. Frank*, 7 Wyo. 457 (1898), the court held that the witness was not excused from testifying, saying (p. 463):

"However binding an obligation may be, as between members of the same society, secret or otherwise, not to divulge to others that which may be confidentially committed to them, such an obligation must be understood to be subject to the laws of the country, and doubtless the societies themselves recognize that such a limitation attaches to the obligation; and therefore it cannot be said that the obligation is violated when the disclosure is compelled in a court of justice, in the course of the administration of the laws."

Will views entertained about Masonry and secret societies make a person incompetent to make a will?

In *American Bible Society vs. Price*, 115 Ill. 623 (1886), the court held that extreme notions or opinions upon religion, colleges, education, or Masonry and secret societies will not necessarily render a man incapable of making a will, but they may do so.

Is it slander to state a man "poses as a Mason in good standing?"

In *Campbell vs. Morris*, 224 Ill. App. 569 (1922), the Masonic Relief Association issued a bulletin that the plaintiff, a candidate for public office, had demitted from the lodge, and yet "poses as a Mason in good standing . . .". The court held that these words, standing alone in the plaintiff's complaint, were not enough to state a good cause of action. The court said (p. 574):

"To say that one who is a Mason that he states or affirms he is a Mason in good standing is not libelous. To say the same thing in regard to one who is not a Mason would not be libelous without further statement that he assumed the character of a Mason for the purpose of imposing on or deceiving others."

Can a Masonic emblem be registered as a commercial trademark?

In the matter of John F. Tolle, *Decisions of the Commissioner of Patents*, 1872, page 219, the Commissioner refused to register as a trademark certain words with the Masonic emblem for a flour manufacturer. The opinion stated (p. 219-220):

"There can be no doubt that this device, so commonly worn and employed by Masons, has an established mystic significance, universally recognized as existing; whether comprehended by all or not is not material to this issue. In view of the magnitude and extent of the Masonic organization, it is impossible to divest its symbols, or at least this particular symbol, perhaps the best known of all, of its ordinary significance wherever displayed. It will be universally understood, or misunderstood, as having Masonic significance, and therefore as a trademark must certainly work deception."

Is a clandestine group which uses the United States mail in selling claimed Masonic degrees guilty of using the mail to defraud?

In *Bergera vs. United States*, 297 Fed. 102 (1924), the court upheld the conviction of Dominic Bergera and Matthew McBlain Thomson, promoters of the American Masonic Federation, for selling spurious Masonic degrees through the mail. The trial is described in great detail in *The Thomson Masonic Fraud*, by Isaac Blair Evans. A copy of the transcript of the trial is in the Iowa Masonic Library and also in the Library of the Grand Lodge of Utah.

Is a Mason competent to serve as a juror in a case in which the Grand Lodge is suing a lodge treasurer for money due?

In *Burdine vs. Grand Lodge of Alabama*, 37 Ala. 478 (1861), the court observed that the general rule is that a person having a financial interest

in a case could not serve as a juror no matter how small that interest might be. But the court held that the Mason in this case was not disqualified from serving as a juror, using the following reasoning (p. 482):

“The society known as free-masons has long existed in this country, and in almost or quite every part of it. The purpose and objects of the society have been made public in numerous books, periodicals, and public addresses. From all these sources of information, and from generally received and accredited judgment of the public, the sole purpose and object with which Masonic institutions acquire money and property beyond their current expenses as a society, (furniture, lights, fuel, stationery, and the like) are for the bestowal of relief and charities of the needy. . . . we will take judicial notice, that the grand and subordinate lodges of free-masons within the state of Alabama constitute a charitable or eleemosynary corporation.”

Can a Masonic lodge be subject to the bankruptcy law and be declared a bankrupt?

In *re McKinley Lodge No. 840*, 4 *Fed. Supp.* 280 (1933), creditors of the lodge filed a petition to have the lodge declared a bankrupt. The question was raised by one of the creditors as to the applicability of the Bankruptcy Act to the lodge. The court held that the lodge was organized and was functioning in such a manner which brought it within the terms of the Bankruptcy Act.

Is a judge disqualified from presiding over a trial in which an organization of Masons is the plaintiff where the judge is a Mason?

In *Masonic Building Corporation vs. Carlsen*, 128 *Neb.* 108, 258 *N. W.* 44 (1934), the court held the judge was not disqualified since he had not contributed financially to the funds of the plaintiff organization, and he would not personally profit or benefit in any way from the activities of the plaintiff or as a result of the decision in the case.

Must a Mason who is a Supreme Court Judge disqualify himself from taking part in a decision of a case involving The Scottish Rite Hospital for Crippled Children?

In *Blackman vs. Harwell*, 198 *Ga.* 165, 31 *S.E. 2d* 50 (1944) the judge did not disqualify himself in the case. The court said (p. 172):

“From the earliest times it has been held that the requirement of impartiality disqualifies a judge from acting in a case in which he has an interest. Though it has been held that the disqualifying interest may be a personal one to the judge, the general rule is that it must be pecuniary in nature, and not remote, uncertain, specula-

tive or merely incidental; and several cases emphasize the distinction between property interest and such interest as results from a feeling of sympathy or bias that would disqualify a juror. . . . The interest which disqualifies a judge is a direct pecuniary, or direct property interest, or one which involves some individual right of privilege, in the subject-matter of the litigation, whereby a liability or pecuniary gain may occur on the event of the suit. . . . A judge is not per se disqualified to try a cause one of the parties to which is a church, lodge, or society of which he is a member."

Are the statements made by a non-member at a Masonic trial privileged and not subject to an action for libel?

In *Nix vs. Caldwell*, 81 Ky. 293, 50 Am. Rep. 163 (1883), the court held that an affidavit filed in a Masonic trial making libelous statements against a non-member was not privileged.

Can prospective jurors be questioned as to their membership in the Craft where two competing Masonic groups are involved in the litigation?

In *State vs. Stonestreet*, 112 W. Va. 668, 166 S.E. 378 (1932), the defendant had been found guilty of larceny for receiving money under false representations in soliciting one to join an organization. The court said (p. 670):

"As defendant in requesting the court to ask jurors whether they were members of any Masonic order, stated that the prosecution was the result of hostility between local lodges of two Masonic orders, we are of the opinion that it was error to refuse the request. He was entitled to know whether the jury included members of the rival order to intelligently exercise his right of peremptory challenge."

Is a charitable Masonic group immune from an action of slander?

In *Turnage vs. New Bern Consistory*, 215 N.C. 798, 8 S.E. 2d 8 (1939), the court held that the defendant was not immune from an action of slander because it gave the net profits from a motion picture show to a crippled children's hospital.

Is a statement made during a Masonic trial privileged against an action of slander?

In *State vs. Drake*, 122 S.C. 350, 115 S.E. 297 (1922), the defendant was indicted for libel; the court permitted in evidence a letter written by the defendant. The court said (p. 351):

"Appellant wrote the letter in confidence to the Master of his lodge,

after he had been charged with violation of the rules of the order, and threatened with being disciplined by the order, in defense of the charge that had been practically preferred against him. He did not intend that it should go farther than the Master and brethren of the lodge; he did not publish the libel, but the Master of the lodge made the contents of the letter public when he received it. It was a privileged communication to the lodge through its Master. It was a confidential letter to his brother Masons, in defense of his good name and standing in the order, and such a letter was confidential and privileged.

"The Masonic order has the right to investigate any violations of the rules of the order, and to discipline its members if found violating its rules. And any member, in his defense, had the right to defend himself, and to regard his communication to the lodge as privileged and imparted in confidence and secrecy, and not to be made public outside the lodge room to others than members of the order."

To what interesting law suit has St. Andrew's Lodge of Boston been a party to?

In January, 1764, events started in St. Andrew's Lodge which led to the purchase of the building where the lodge met and which was known as the Green Dragon Tavern. In *King vs. Parker*, 7 *Cush.* 71 (1851), the court held that the technical objections of the heirs of the seller could not be sustained. They had filed a suit to recover a half interest in the property on the technical ground that the deed conveying the property was worded in such a way that it gave the grantees only a life estate. Paul Revere, acting for the lodge, was one of the grantees.

Can the record of a lodge be used to establish the pedigree of a person long dead?

In *Howard vs. Russell*, 75 *Tex.* 171, 12 *S.W.* 525 (1889), the court held (p. 172): "The copies of the lodge records, being sworn to and certified, in the manner offered were admissible on the issue of pedigree in connection with the fact of Colomore Bean being a member of the Masonic order, and his residence and membership in that lodge."

Can trust funds held by a Masonic group be diverted to some other use?

In *State ex rel Grutze vs. Toney*, 141 *Ore.* 406, 17 *P.* 2d 1105 (1933), the Grand Lodge of the state had an educational fund which was for the purpose of use for the education of children of Masons of the state; it also had a Home Fund for the purpose of maintaining a home for members. At a Grand Lodge session a resolution was adopted that a deficit in the Home

Fund be made up with funds from the other fund. This suit was filed by a contributor to both funds to prevent the transfer of the funds. The court said (p. 1106): "There can be no doubt that both the educational fund and the home endowment fund are quasi public charities." And further on the court said (p. 1106):

"The protection of quasi public charities and trusts is peculiarly within the inherent powers of a court of equity. These powers are always available to compel the trustees of such trusts to discharge their duties according to the conditions under which they hold."

The court also said (pp. 1106-1107): "The charitable uses designated by the donor of the fund cannot be changed to any other purpose so long as there are objects of such charity or so long as it can be applied to the purpose named."

Is a lodge liable for medical care and attention given to one of its members?

In *Halcyon Lodge vs. Watson*, 7 Kan. 661, 53 P. 879 (1898), the court held that a lodge cannot be held liable for medical attention given a member by order of certain officers unless it is shown that the officers had been given authority to incur this obligation on behalf of the lodge.

If a mortgage is signed by officers of a lodge and their signatures have after them the word, "trustees", can they be held personally liable if the mortgage is not paid?

In *Uptown Federal Savings and Loan Association vs. Collins* 105 Ill. App. 2d 459, 245 N.E. 2d 521 (1969), the court held it could hear oral testimony to explain the apparent ambiguity on the instrument and from the evidence concluded that the signers were not individually liable on the obligation.

Was Freemasonry mentioned in the famous Nurnberg trials after World War II?

Yes. Our late Brother Irvine Wiest made a study of the transcript of the trial as reproduced in *Nazi Conspiracy and Aggression*, published by the United States Printing Office, in 1946 and 1947, and discovered many items of persecution of Masons and the Craft. He reported his findings at a talk on February 22, 1959, before the Society of Blue Friars, in Washington, D.C. The talk was later published by the Missouri Lodge of Research in pamphlet form.

BIBLIOGRAPHY

Law Encyclopedias:

The American and English Encyclopedia of Law, 2d ed. (1900)
Vol. 14, pp. 533-546.

"Associations," 5 *C.J.* 1330; 7 *C.J.S.* 18

"Freemasons", 27 *C.J.* 897; 37 *C.J.S.* 1375

4 *Am. Juris.* 455; 10 *Am. Juris.* 579; 38 *Am. Juris.* 435

American Law Reports Annotated:

Exemption from Taxation of Property of Fraternal or Religious
Association

22 *A.L.R.* 907 (1923)

38 *A.L.R.* 36 (1925)

83 *A.L.R.* 768 (1933)

Compelling Admission to Membership in Professional Association
or Society

89 *A.L.R.* 2d 964 (1963)

Contributions, Personal Liability on, of Member of Voluntary As-
sociation not organized for personal profit

41 *A.L.R.* 754 (1926)

Effect of Injunction Restraining Expulsion

1 *A.L.R.* 169 (1919)

Expulsion from Professional Association

20 *A.L.R.* 2d 531 (1951)

Expulsion from Social Club or Similar Society

20 *A.L.R.* 2d 344 (1951)

Expulsion or Suspension of Local Lodge or Other Unit of Benefit
Society

94 *A.L.R.* 639 (1935)

Liability of Members for Distribution of Property of Defunct As-
sociation or Club Contrary to Rules Therefor

168 *A.L.R.* 962 (1947)

Meaning of phrase "In Good Standing" employed in Contract of Mutual Benefit Association with Member

23 A.L.R. 340 (1923)

Notice and Hearing before Suspension or Expulsion, Right to, of Member of Society with Benefits in Nature of Insurance

27 A.L.R. 1512 (1923)

Notice or Hearing as Affecting Expulsion from Professional Association

20 A.L.R. 2d 540 (1951)

Notice or Hearing as Affecting Expulsion from Social Club or Similar Society

20 A.L.R. 2d 353 (1951)

Power and Capacity of Members of Unincorporated Association, Lodge, Society, or Club to Convey, Transfer, or Encumber Association Property

15 A.L.R. 2d 1451 (1951)

Recovery by Member from Unincorporated Association for Injuries Inflicted by Tort of Fellow Member

14 A.L.R. 2d 473 (1950)

Remedies for Determining Right or Title to Office in Unincorporated Private Association

82 A.L.R. 2d 1169 (1962)

Resignation of Membership in Club or Other Non-Profit Association

99 A.L.R. 1444 (1935)

Right to Assets of Defunct or Voluntarily Dissolved Club

68 A.L.R. 956 (1947)

Right to Damages for Exclusion from Membership in Social Organization

59 A.L.R. 2d 1290 (1958)

Rights and Liabilities Arising out of Contract for Lifetime Membership in Social or Fraternal Club or Association

10 A.L.R. 3d 1357 (1966)

Right to Damages for Exclusion from Membership in Social or Fraternal Organization

59 A.L.R. 2d 1290 (1958)

Right to Discipline Member for Exercising a Right or Performing a
Duty as a Citizen

14 A.L.R. 1446 (1921)

Second Trial by Association for Same Offense

1 A.L.R. 431 (1919)

Suability of Individual Members of Unincorporated Association as
Affected by Statute or Rule permitting Association to be sued
as an Entity

92 A.L.R. 499 (1963)

Suspension or Expulsion from Social Club or Similar Society and
Remedies Therefor

20 A.L.R. 2d 344 (1951)

Suspension or Expulsion from Church or Religious Society and the
Remedies Therefor

20 A.L.R. 2d 421 (1951)

Suspension or Expulsion from Professional Association and the
Remedies Therefor

20 A.L.R. 2d 531 (1951)

Rights and Remedies in Respect of Membership in American Legion
or Other Veteran Organization

147 A.L.R. 590 (1943)

Tax Exemption or Property Used by Fraternal or Benevolent
Association for Clubhouse or Similar Purpose

39 A.L.R. 3rd 640 (1971)

Tax on Dues or Membership Fees; what is a Social Club within
Statute Imposing?

80 A.L.R. 1296 (1932)

135 A.L.R. 1173 (1941)

Digests of the Masonic Service Association:

Alphonse Cerza, *Freemasonry and Civil Law*, 1953 .

Spurious Freemasonry, 1st ed., 1934; 2nd ed., 1945

Taxation of Masonic Property, 1st ed., 1932; 2nd ed., 1945

Quatuor Coronati Transactions:

- William Fooks, *Freemasons in Reference to the Laws of the Realm*,
5 A.Q.C. 88, 1892
W.B. Hextall, *The Craft in the Law Courts*, 30 A.Q.C. 222; 1917

Miscellaneous:

- Alphonse Cerza, *The Taxation of Masonic Property*, Walter F. Meier Lodge of Research, 1955
Alphonse Cerza, "Women's Liberation" and Freemasonry. Research Lodge No. 2, Iowa, 1977.
Alphonse Cerza, *Freemasonry in the Courts*. Volume 12 Royal Arch Mason Magazine, page 12. 1977.
Alphonse Cerza, *What Are Our Rights?* *Philalethes Magazine*, August, 1977, page 10
Dispose and Gammon, *Cases Affecting Friendly Societies*, England, 1897
Isaac B. Evans, *The Thomson Masonic Fraud*, privately printed, 1922
Arthur D. Hay, *Freemasonry and the Civil Courts*, published in the *Transactions of the Research Lodge of Oregon*. 9 pp.
Mackey's Encyclopedia of Freemasonry, Vol. 3, by H.L. Haywood, pp. 1283-1287.
W. Irvine Wiest, *Freemasonry in the American Courts*, Missouri Lodge of Research, 1958