

AN INTERESTING DECISION.

Of Special Importance to Members of the Masonic Order.

Judge Catlin Holds that the Grand Chapter is the Judge of What is True Masonry.

Judge Catlin yesterday rendered his decision in the somewhat celebrated case of P. S. Lawson against A. Hewell and others. It is one that is especially interesting to members of the Masonic order, as it relates to what is generally termed among them as the "Cerneau Rite" of Scottish or adoptive Masonry, and which is claimed by the two recognized jurisdictions of the Scottish Rite in the United States to be illegitimate.

Lawson sued to restrain the defendants, Adolphus Hewell, Thomas Flint, Sr., and others, who represent the Grand Chapter of Royal Arch Masons of California, the members of Stockton Chapter, No. 28, R. A. M., and John W. Boyd, High Priest, and A. J. Vermilya, Scribe, of Sacramento Chapter, No. 3, from causing his suspension or expulsion as Royal Arch Mason, on account of his connection with the Cerneau Rite of Scottish Rite Masonry.

The demurrer to the complaint was argued for several days before Judge Catlin by ex-Judge Myrick of San Francisco and McKune & George of this city for the plaintiff, and by S. S. Hill and C. A. Elliott for the defense. Judge Catlin sustains the demurrer, and gives his reasons at length for so doing. Following is:

THE DECISION.

The defendants in this case are Adolphus Hewell and four others, "representing the Grand Chapter of Royal Arch Masons of the State of California." The Most Excellent Grand Chapter of Royal Arch Masons of the State of California, of which body the said Adolphus Hewell is the Grand High Priest, Thomas H. Caswell is the Grand Secretary, and these two, with three other named, are the principal executive officers. Stockton Chapter, No. 28, of Royal Arch Masons, with its officers and members to the number of about ninety, and John W. Boyd and A. J. Vermilya, described as members of Sacramento Chapter, No. 3.

The plaintiff is, for more than thirty-five years last past, has been a member in good standing of Sacramento Chapter, No. 3.

The complaint avers that there are seventy-six local chapters in California, all subordinate chapters of the Grand Chapter of the State, and the whole body is described as fraternal, benevolent, charitable, beneficial and social organization. Membership is availed to be "a valuable thing for the reason, among others, that it enables its members, including the plaintiff, to extend their friendships and acquaintances among other chapters of Royal Arch Masons in this State and in other States in the Union, and gives them the increased privileges, courtesies and fraternal relations extended by one member of Royal Arch Masonry to another throughout the world." It is averred also that during his membership of Sacramento Chapter, No. 3, plaintiff has paid to said chapter initiation and other fees amounting to upward of \$150, "thereby contributing to building up and accumulating a large amount of property, which is now owned by the plaintiff, in common with the other members of said Sacramento Chapter, No. 3, and being of about the value of \$4,000, and each member has the right to participate in the use and disposition of said property, and to be assisted therefrom in case of need and distress."

An averment of the same character is made to the effect that plaintiff is made to the effect that plaintiff for more than thirty years last past has been and now is a member in good standing of the Sacramento Chapter, No. 1, Royal and Select Masters, composed of Royal Arch Masons, and during such membership has paid said council initiation and other fees amounting to not less than \$45, thereby contributing to the accumulation of a common property of the value of about \$250, in which he and his fellow-members have a right to participate.

sonry (other than Royal Arch Masonry)." The complaint proceeds further to show that there are "existing and active" in California two Masonic bodies known as the "Ancient and Accepted Scottish Rite Masons," one of which is organized under the authority of the "Supreme Council of the Ancient and Accepted Scottish Rite of Masonry for the United States of America, their Territories and Dependencies, commonly known as the United States Jurisdiction of the Ancient and Accepted Scottish Rite, and is presided over by William A. Hershiser of Columbus, Ohio, and is a representative body controlled by a majority of its members and electing its officers annually; that the other of the said bodies in California is a monarchical and despotic body, and is organized under the authority of what is known as the Southern Jurisdiction of the Ancient and Accepted Scottish Rite of Masonry, which is presided over by Thos. H. Caswell of San Francisco, one of the defendants herein; that the first mentioned of these two jurisdictions is organized in the United States in 1807 by Joseph Cerneau under the authority of the Grand Orient of France, and claims jurisdiction over the whole of the United States; that the other was organized in 1890 at Charleston, South Carolina, by Albert Pike, claiming jurisdiction over portions of the United States, including California, and disputing the right of Joseph Cerneau "to establish bodies of Ancient and Accepted Scottish Rite Masonry as he had done"; that since the establishment of these two bodies a rivalry has existed between them, owing allegiance to each respectively, "and the leaders of the said Southern Jurisdiction in the said State of California, becoming alarmed at the rapid growth of the said rival body, have carried the controversy into the chapters of Royal Arch Masonry with which they are connected, and the said Southern Jurisdiction has no connection or affiliation whatever."

That as far back as 1887 "certain designing Royal Arch Masons" who were members of said Southern Jurisdiction of the Scottish Rite entered into a conspiracy to suppress all bodies owing allegiance to said Cerneau branch, and to that end, went to work with their fellow-members and friends among the members of the Grand Chapter of Royal Arch Masons "in a quiet and secret way," and induced a majority of them to adopt resolutions which determined in effect that said Southern Jurisdiction of the Scottish Rite was "legitimate," and said Ancient and Accepted Scottish Rite of the United States was "irregular, illegal and unmasonic," and subsequently, in furtherance of said conspiracy, procured the passage of a resolution or ordinance numbers 21 and 26, "all of which acts and doings of the said chapter of Royal Arch Masons of California (controlled by said conspirators as aforesaid) were unconstitutional, illegal and violative of said charter, constitution, laws and landmarks and usages of Royal Arch Masonry."

The following are the ordinances Nos. 21 and 26, which are the roots of the alleged evil against which relief is sought, taken from the "General Regulations of the Grand Chapter of Royal Arch Masons of the State of California": "21. This Grand Chapter acknowledges no degree of Masonry or order of knighthood to be legitimate and genuine except those conferred by or under the authority of the following regularly constituted bodies of the United States of America and those of corresponding rank in foreign countries, to wit: "The Grand Lodge of Free and Accepted Masons of the several States and Territories; the General Grand Chapter of Royal Arch Masons of the United States and Territories; the General Grand Council of Royal and Select Masters of the States and Territories; the Grand Encampment of Knights Templar of the United States, and the Grand Commanderies of the States and Territories; the Supreme Council of the Ancient and Accepted Scottish Rite of Free Masons; the Southern Jurisdiction of the United States of which Albert Pike is the Grand Commander, and the Supreme Council of the Ancient and Accepted Scottish Rite of Free Masonry for the Northern Jurisdiction of the United States, of which Henry L. Palmer is Grand Commander."

"It is hereby declared that any Royal Arch Mason who shall hereafter take and receive any so-called Masonic degree or order of knighthood of any man or body of men not heretofore acknowledged to be legitimate and genuine, shall be expelled from all the rights and privileges of a Royal Arch Mason."

"It is hereby further declared that any Royal Arch Mason who shall hereafter confer, communicate, or sell, or be present at, or assist in the conferring, communicating, or selling, or solicit any one to take, or apply for, or apply for any so-called Masonic degree or order of knighthood in any assemblage of men, no matter by what name soever it may be called, except it be held under the authority of one of the bodies hereinbefore acknowledged to be legitimate and genuine, shall be expelled from all the rights and privileges of a Royal Arch Mason."

"26. That upon the application of the High Priest of any Chapter in this jurisdiction to whom charges for the violation of the constitution or general regulations of the Grand Chapter have been presented, or of any three members of such Chapter, the Grand High Priest may transfer the trial of the accused from the Chapter of which he is a member, or in the jurisdiction of which he may reside, to some other Chapter to be named in his order of transfer, whenever in his judgment such transfer is necessary or expedient."

The complaint then proceeds to show that in May, 1895, the defendant Vermilya, a member of Chapter No. 3, presented to defendant Boyd, the High Priest of said chapter, written charges against the plaintiff, in which it is specified that he is guilty of "conduct unbecoming a Royal Arch Mason, to wit: the willful violation of General Regulation No. 21 of the Grand Chapter of Royal Arch Masons of California, committed as follows, to wit: that the said Powell Samuel Lawson did, on or about the 27th day of February, A. D. 1885, at the city of Sacramento, in the State of California, openly, willfully and unlawfully solicit Companion Clive William Porter, a Royal Arch Mason, and a member in good standing of Sacramento Chapter, No. 3, R. A. M., to apply for, take and receive the so-called Masonic degrees in the Ancient and Accepted Scottish Rite from an alleged Masonic body, claiming to

act under a dispensation or charter from a body styling itself the Supreme Council of the Accepted Scottish Rite of the United States of America, its Territories and Dependencies, which said body is not one declared to be genuine and legitimate by the aforesaid General Regulation No. 21."

The charge contains another specification to the effect that plaintiff is and for some time past has been an active member of a spurious and clandestine body of Masons (the name and title of which is unknown to the complainant), and since the adoption of said General Regulation No. 21, has knowingly and willfully assisted in conferring so-called Masonic degrees in said spurious body, all of which is in violation of said General Regulation No. 21.

In pursuance of Regulation No. 26, defendant Hewell, the Grand High Priest of the Grand Chapter, made an order transferring the trial of the plaintiff to Stockton Chapter, No. 28, and thereupon said Stockton Chapter summoned plaintiff to appear for trial at the hall in Stockton on the 6th day of August, 1895.

The complaint avers "that plaintiff is informed and believes, and therefore alleges the fact to be, that the action of defendants A. H. Hewell, A. J. Vermilya and John W. Boyd was prompted by a desire to oppress this plaintiff, and prevent him from securing witnesses, and presenting his defense to said charges of unmasonic conduct, and also to prevent him from having a fair and impartial trial; for as defendant is informed and believes Stockton Chapter, No. 28, is friendly to the schemes of said conspirators, is controlled by them, and is unfriendly and prejudiced against this plaintiff by reason of the matters set forth in said charges."

In this connection plaintiff avers that the Scottish Rite order of which he is charged with being a member, and with soliciting others to become such, "is a lawfully organized society; that its purposes and practices and its fundamental principles are not inconsistent with those of Royal Arch Masonry and are not scandalous or immoral, but the principles and practices of said order are entirely consistent with the principles and purposes and practices of Royal Arch Masonry." Also, that the said attempted action of the defendants herein is subversive and violative of the ancient usages and landmarks of said order of Royal Arch Masonry, to which there never has been an exception in the State of California; that membership in any lawful order or institution, religious, political, social, or otherwise, should be no test for membership as a Royal Arch Mason, and that no member of the order of Royal Arch Masonry shall (should) be in any manner dealt with, called in question or affected in his membership by reason of his membership with said attempted institution; also, that said attempted action is in violation of plaintiff's rights as a Royal Arch Mason, for the reason that when he first became such no such imposition or restriction as that now imposed by regulation No. 21 existed; "that plaintiff never assented to any such rule or regulation, and avers that the attempt of the Grand Chapter of California to insert a new condition into his original contract of membership with said order of Royal Arch Masonry without his consent is illegal, unconstitutional and in excess of its jurisdiction."

From the foregoing statement, as made by the complaint, which is met by a general demurrer, the proposition is plainly presented as a necessary one to be decided in order to reach the relief prayed for, that the court must adjudicate that the Cerneau branch of the Scottish Rite is a genuine and legitimate order in the Masonic sense, and that the Albert Pike branch of the same Scottish Rite is spurious and illegitimate; and further, as a consequence, that no chapter of Royal Arch Masonry in California has the right under its constitution, laws and usages to exclude a member of the Cerneau Scottish Rite for the reason of being such, or to prefer fellowship with a rival order alleged to be "monarchical and despotic." In other words, that regulation No. 21, which stands in the way of these contentions, must be removed by the court, and a court pronouncing it to be unconstitutional and null and void, and restraining Sacramento Chapter, No. 3, and Stockton Chapter, No. 28, and from the other defendants herein from taking any action under said regulation.

It is claimed by plaintiff that this regulation is unconstitutional judged by the canons of Masonry as well as the laws of the land. As to the first of these propositions, the court will not undertake to decide; as to the other, it can find no ground for condemning the regulation as being in any way contrary to public policy or in contravention of the law of the land. It must stand or fall by the doctrine of Masonry as defined, not by the courts, but by the authorities of Masonry.

In Otto vs. Tailors' Union, 75 Cal. 314, the fundamental objects of the association were clearly understood and made known to the court. They were quite simple and plain. Can the court see in this case and declare what the fundamental principles and objects of the Masonic Order are, so as to be able to determine whether plaintiff has been excluded from the Masonic sense, and principles? Again, is it not sufficiently manifest that something more, and of more importance than the participation in "benefits" so called, is involved in the fundamental principles of the order? Matters of vital importance to the exclusion and purpose of the order may be apparent and yet a court may be unable to define and declare what such principles and purposes are with the certainty necessary as the basis for a judicial decree. Differences of opinion may exist among the members of the order as to the scope of these principles and their bearing upon the conduct of individual members. As to what is or is not "unmasonic" conduct on the part of a Mason must be a Masonic question.

of a court of equity can be successfully invoked. What, then, is the character of the property plaintiff has as a Royal Arch Mason? His individual property right is the right while he is a member in good standing, to be assisted when he is in need or distress from the funds of the society in the manner and to the extent prescribed by the rules of the society. This right is not proportionable or severable, nor is it alienable. The interest is not a co-partnership interest as in some Mutual Benefit Associations; it has been held to be. It ceases to have potential existence when his "good standing" ceases; and he accepted membership with such understanding and upon such conditions. In societies of this kind fraternal fellowship is the main object—the accumulation of property is a mere incident in aid of the main object. Such property remains with the society as long as it exists, and, doubtless, could be lawfully distributed among those who constitute the society at such time as it might cease to exist.

In State vs. Odd Fellows' Grand Lodge, 8 Mo. App. 200, the court said: "It is competent for the Odd Fellows to determine who is an Odd Fellow; and these are questions into which the courts of this country have always refused to enter, holding that when men once associate themselves in some Mutual Benefit Association, professing certain religious views, or holding themselves out as having certain

(Continued on Fifth Page.)

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