"The Masonic Case."

COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO.

B. F. REES ET AL., TRUSTEES, ETC.,

VERSUS

W. A. HERSHISER ET AL.

ARGUMENT OF COL. J. T. HOLMES.

OPINION OF JUDGE EDW. F. BINGHAM.

DECREE OF THE COURT.

PRINTED FOR ENOCH LODGE OF PERFECTION.

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STATEMENT OF THE CASE.

On the 1st day of June, 1878, Enoch Lodge of Perfection obtained from Schultz & Co., the owners, a written lease of the fourth story of what is known as "Commercial Block," 103 South High street, in the city of Columbus. By its terms, this lease was to expire April 1, 1883. It contained an option to extend it. In 1882 the landlords so improved the property as to make an additional hall in the rear of said fourth floor and on a level therewith. This was also leased to Enoch Lodge for a banquet hall.

The occupancy of the premises by the Lodge continued without interruption, the Lodge paying stipulated rent, until about the middle of August, 1884, when the defendants, Messrs. W. A. Hershiser, G. A. Frambes, J. F. Martin, J. C. Kroesen and Henry O'Kane "withdrew" from the Lodge and asserted title in themselves to the property, to the exclusion of all rights of the

Lodge therein, by virtue of a lease which they had obtained from Schultz & Co., May 26, 1884, for five years from April 1, 1884.

The defendants, soon after their "withdrawal," surreptitiously took possession of the premises, and locked Enoch Lodge out. The Lodge regained possession, and was again locked out, and again recovered possession.

The plaintiffs, then, as trustees, officers and members of Enoch Lodge of Perfection, in the latter part of August, applied to the Court for an injunction against interference by defendants with its possession of the premises.

A temporary injunction was allowed, but subsequently modified so as to allow defendants and Columbus Lodge of Perfection, which they had organized after their "withdrawal" from Enoch Lodge, to occupy the premises one night in each week until the final hearing.

The defendants did not disclose to Enoch Lodge that they had the lease of May 26th until their "withdrawal." In their answer they claimed that the premises were their's exclusively, and that they had been in possession from the date of their lease, but "*generously*" offered to sub-let to Enoch Lodge a qualified use thereof.

At the time they procured the lease they were the trustees and officers of Enoch Lodge of Perfection, exercising their several functions therein.

Early in November the case was tried before His Honor, Judge Edward F. Bingham, and submitted on written arguments. Following is the argument of Colonel J. T. Holmes on behalf of the plaintiffs:

ARGUMENT.

My colleagues, Messrs. Albery, Albery & Lentz have prepared—rather *are preparing*—a brief in behalf of our clients which properly precedes what is herein stated; and as they have discussed, or will discuss, the greater portion of the evidence and the legal propositions that apply, I shall confine myself to a few special matters.

I.

The following is the *oath of fealty* which had been taken by each of the men who were instrumental in procuring the lease of May 26, 1884, to wit:

"I, the undersigned, do hereby promise on my word of honor, and swear true faith, allegiance and fealty to the Supreme Council of Sovereign Grand Inspectors-General of the thirty-third and last degree for the Northern Masonic Jurisdiction of the United States of America, sitting at its Grand East in the city of Boston, Massachusetts, of which the Illustrious Henry L. Palmer (or the M. P. Sovereign Grand Commander for the time) is the Most Puissant Sovereign Grand Commander, and will support and abide by its constitution, statutes, orders and decrees.

"That I will hold allegiance to the said Supreme Council and be loyal thereto, as the Supreme Authority of the Rite so long as I may continue to reside within its jurisdiction, claiming to be a Supreme Council; and will hold illegal and spurious every other body that may be established within its jurisdiction claiming to be a Supreme Council; and every other body of said Rite within the same jurisdiction that does not hold its powers mediately or immediately from said Supreme Council, and will hold no Masonic communication whatever with any member of the same nor allow them to visit any Masonic Body of which I may be a member; and I will dispense justice to my brethern, according to the laws of honor and equity.

"And should I violate this, my solemn vow and pledge, I consent to be expelled from Masonry, and all rights therein, and in any Body of the Rite, and to be denounced to every Body of the Ancient Accepted Scottish Rite in the world as a traitor and foresworn.

"And may God aid me to keep and perform the same. Amen." *Art.* 104, *Const., etc., Supreme Council.*

Now, when these gentlemen, the defendants, obtained this lease they were Scottish Rite Masons, acting under the sanctions of this

solemn obligation, the appeal wherein is to the highest power, the Ruler of the Universe, the God who made them.

The only limitation contained in this oath that could, in any degree affect it, so far as this controversy is concerned, lies in the allegiance to the Supreme Council which might terminate with the end of residence within its jurisdiction.

The defendants have not changed residence, and the limitation does not apply.

It is beyond dispute, that when the officers obtained the lease of May 26th, 1884, and caused it to be made in their *personal* names, Enoch Lodge was in possession of the premises. It is just as indisputable that Enoch Lodge continued to occupy and use the premises without let, or hindrance, or controversy of any kind, until the middle of August, 1884.

It is beyond question that Enoch Lodge paid the rent covering the time from May 26, 1884, to October 1, 1884, and paid it to he lessors, just as it had paid the rent for years.

The payments of rent were at no time made to these alleged lessees, and the inference from their official positions in Enoch Lodge, and their relations to it, cannot be resisted, that they had knowledge of the payments of rent made to the agent of Schultz & Co,, and acquiesced therein.

When they took the new lease they were loyal to Enoch Lodge, or they were, at heart, traitors and conspirators.

The presumption is in their favor that they bore to it the allegiance stipulated for in their oaths, and in this view alone, when you remember the time that the Lodge had occupied the halls, and the continued, unquestioned occupancy until August 15th, or later, in 1884, it must be obvious that the lease was obtained, in fact, as the lessors understood it, as an *extension* or renewal of the first lease, and for *the sole benefit* of Enoch Lodge.

For what purpose did these loyal Masons obtain the lease?

They do not, certainly, wish us to draw the conclusion that as early as May last they purposed the "rape" of this lease and all that it implied. They can not be anxious to force the deduction

that, at that time, they had committed a moral breach of their oaths of fealty, and were committing a fraud on Enoch Lodge by the abuse of their powers and positions as Masons and Trustees.

For, if these things were true, their fraud and bad faith, and abuse of trust would vitiate the lease they obtained, in whole and in part, as to them. The paper on which it was written would be rotten through, in a legal sense.

What did that oath of fealty exact and require of men in such positions and under its sanctions?

There can not be two answers to that question.

It exacted and required utmost loyalty to the Lodge of which they were members, and out of the midst of which they walked, as its trustees, in fact and in law, to obtain the "extension" of the lease.

We give them credit with discharging that trust, although like Peter they have denied their Master after a few cock crowings. A change of heart, apparently, came over them subsequently.

How do they stand in view of their oath-bound obligations upon their present theory?

Like this: "We were under the sanctions of the oath of fealty, but its obligations hung so lightly on our consciences, although it was registered in the Court of Heaven, that we could acquire and absorb the Lodge's property rights and make them our own personal rights, holding and owning the benefits, the lease, and leaving Enoch Lodge to bear the burdens, pay rents; not only so, but we acquired power to transfer those rights to whomsoever we may choose."

A strange kind of fealty!

Enoch Lodge had for years occupied the halls. The property, furniture, paraphernalia and the like belonged to Enoch Lodge. One item alone, *the furnishing of the halls*, had cost two thousand dollars.

The further theory of the defendants is that having *withdrawn* from Enoch Lodge after the execution of the new lease, and organized some sort of a Lodge of their own, they are willing to lease

the property to Enoch Lodge, generously including, we suppose, the furniture, fixtures and other personal property of *Enoch Lodge*.

A member of the family charged with the duty of renewing the lease of the home would be as generous as the brethren, and no more or less so, who, in the execution of his trust, should obtain a *personal* lease, deny the trust, and attempt to take possession of the home and all it contained, and then offer to let it to the family, *when he did not wish to enjoy it.*

The leading case in this line of business and this kind of law is found in Matthew, 4th chap., 8th and 9th verses. There, however, the offer was to give *all* that was in sight,* for the concession that was demanded; here, the proposal is to give a *part* only.

To say the least, this would be sublime cheek, and yet it is no more than these defendants attempt and propose. They say they took possession under their lease. That, of course, embraced the fixtures, furniture and paraphernalia, for the reply of plaintiffs shows them still there, and there is no denial of the showing.

What arrangement, gentlemen, did you make with Enoch Lodge about the property and rent when you took possession?

Their answer, their evidence, shows no terms mentioned, discussed or agreed on for the use and occupation of the halls during May, or June, or July, or August, until they began to "claim everything exultingly and with confidence."

By what rule, or law, do they explain this failure to come to an understanding with the occupant of *their* property?

We shall see: The transaction, that is (1) the lease and holding by Enoch Lodge from 1878 to 1884, (2) the making of the new lease by Schultz & Co., and (3), the continued, uninterrupted occupancy by the Lodge, with the incidental facts, either give Enoch Lodge the equitable, *exclusive*, leasehold title to the halls, or they do not give them any right there. Upon the facts there can be no apportionment of the lease or division of time between Enoch

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*Ethan Allen said, "And the d——d rascal didn't own a foot of it."

Lodge and some other person or Lodge. Enoch Lodge is *sole* beneficiary, or without title, under the lease, *if it confers title.*

The Trustees could not have obtained the lease for their new Lodge, (1) because they knew Enoch Lodge had been to large expense in fitting up to remain in, and had *exclusive* possession and control of the premises; and (2) because the law of trusts and their oath of fealty would not permit them to profit by either breach of trust, or treason; and (3) *their new Lodge was not organized until months later.*

Enoch Lodge had fitted and furnished the halls; by what process did the defendants expect to open its doors, its fixtures, its furniture, and its paraphernalia to Tom, Dick and Harry for considerations?

To let in this after-birth, called the Columbus Lodge of Perfection, would be to fraternize and hold communication with those who could take the oath of fealty and *withdraw*, whatever that may mean, and not only remain within the jurisdiction, but organize a body "illegal and spurious" within the words and spirit of that oath; *or*, after each meeting, Enoch Lodge must pack up bag and baggage, its entire "outfit," as the Western phrase is, and decamp to some store house. This could not have been contemplated.

The answer does not show that the defendants ever paid rent; nor does it show that Columbus Lodge of Perfection had done so, or ever promised or agreed to do so.

The plaintiff's reply, filed October 18, 1884, contains, among others, this averment: "All the property, regalia, paraphernalia, furniture, fixtures and other appurtenances of said Enoch Lodge are located in said premises, and are there arranged and placed with particular reference to its rites, ceremonies and customs, and said furniture, etc., have been so located and arranged ever since said 1st of June, 1878, and the defendants have no right to, or interest in the same whatever."

It will be observed that there is no denial in the defendant's reply of this averment; nor is there any denial of the averment

that they have no interest in said Enoch Lodge, nor of the averment that all rights and privileges of membership in them ceased on the 15th of August last.

The defendants continued to exercise the rights and privileges of such membership until the date just named.

Is it reasonable to conclude, in view of the expenditures, the fixtures, the location and use thereof, the steady, unbroken use and occupancy of the premises by the Lodge for years, the *trust* positions occupied by all the defendants, their clear *Masonic* duties under the oath of fealty to exercise the trust for the benefit and behoof of the Lodge, *the silence for months* as to any *personal* rights in themselves, that they betrayed their trust and in violation of duty and right and oaths and the understanding of the lessors, ousted the Lodge and, cuckoo like, appropriated the nest, in fact or law?

We think not.

Schultz & Co., upon the clear testimony of their agent, never assented, or consented, to the proposition to deprive Enoch Lodge of its leased rights; not only so, by their agent, the positive understanding and purpose of the lessors was that Enoch Lodge should continue the sole, beneficial lessee of the premises then occupied by it.

A trust may be implied or attached by parol to a written obligation.

It requires two to make a bargain.

The lessors have not exchanged tenants. *Their minds*, upon the distinct evidence of their agent and upon the great weight of probabilities in this cause, and the reason of the thing, have never assented to such exchange. If the defendants intended, at the time, a breach of their trust, and to supplant the Lodge as beneficial lessee, the contracting minds never met, and the defendants have no beneficial interest under the lease.

If they were Trustees, in loyalty bound to obtain the lease for the Lodge, and Schultz & Co. supposed and understood they were leasing to the Lodge, the equitable right passed to the Lodge, and

the trust arose, no matter if each Trustee—they were all in fact Trustees—or the whole of them, intended to cheat and overreach the Lodge in the transaction.

By their reply, they deny the allegation that it was their duty to obtain the lease for the Lodge.

If not theirs, whose was the duty?

They were holding its official positions, bound to perfect good faith touching all the interests of the body and its members; and, as shown by the original lease, and the character of their offices, the proper agents to acquire, for the Lodge, its halls and rooms as places of meeting.

They acquire leasehold title May 26, 1884. By all honor and the law, their first duty was to the principal, the body, of which they were agents.—2 *Pomeroy's Eq., Sec.* 1050.

No question of power is made. It is to be noted that while holding these positions in the Lodge they did not deem it necessary to take the sense of the Lodge before action in acquiring the lease. If they had been disloyal to the Lodge and regardless of their oaths of fealty and unmindful of the trusts with which they were invested, they might have sought to undermine the beneficiary by surreptitiously acquiring its property and absorbing its rights otherwise. But, as already stated, the presumption of loyalty, whether they were then loyal at heart or not, must prevail in their behalf; and so prevailing, they were Trustees for Enoch Lodge, and could make no more profit or advantage to themselves out of its rights—and it *had* the right of "extension" by the express provisions of the original lease—than a guardian could make profit or advantage to himself out of the rights of his ward.

We are in a court of equity, "which disrobes transactions of all matters of form and looks at the naked facts. Equity penetrates to the substance of a transaction, and is governed by it, not its form. In a proper case, if there be no trustee appointed by the parties, it creates one; and upon the same principle, if the character of trustee or agent be assumed, in an improper case,

equity disregards it."—*Glidden, Murphin & Co*, vs. *Taylor*, 16 O. S., p. 519.

By the testimony of their agent, it appears that the lessors knew they were leasing to Enoch Lodge. They supposed and believed Enoch Lodge was in fact, though not in form, the tenant and lessee under the new contract. They received rent under the new lease from Enoch Lodge, as the tenant, and *never* from the defendants.

II.

It may be claimed that the defendants in their own proper persons are tenants *because* they are, in form, bound for rents.

The claim is fallacious. The conclusion does not follow from the premises. In the original lease there were almost a dozen men, by signatures, bound for the rent; yet not one of them could logically argue from thence that he was a *personal* lessee, or entitled to any rights under the lease by virtue of such signature.

Acting as Trustees, known to the lessors as Trustees of Enoch Lodge then in possession of the premises, beyond acquiring leasehold rights for the Lodge, they might bind themselves as sureties for the payment of rent just as members bound themselves in the prior lease.

The liability to pay rent does not *ex vi termini* import the rights of a tenant under the lease when the party may be so bound.

The defendants chose the form of obligation voluntarily and they must abide by whatever the "naked facts" shall fix as their legal rights, obligations, and liabilities arising thereon.

III.

At the time the defendants obtained the lease, the Lodge was holding over upon terms fixed by the old lease, and by the agreement made in relation to the banqueting hall in the new addition.

It is not necessary at this moment to discuss the possibilities, in a legal way, resulting from the holding over and the agreement mentioned; but one thing can not be gainsaid, and that is, that

on the 26th day of May, 1884, the Lodge was in possession, as tenant, by implied renewal from year to year—April 1st to April 1st—if the holding over had not renewed the lease, as to the old hall at least, for a term equal to the original term.

The legal effect of holding over under the terms of the original lease and the payment of stipulated rent, could not give the tenant less than a tenancy from year to year.

The original lease expired on the *first day of April*, 1883, and when Schultz & Co. permitted Enoch Lodge to enter upon the next rental year, at the very least, there was an implied agreement that the Lodge should occupy until *April 1st*, 1884, paying rent at previous rate.

The tenant, after the expiration of such year, and the payment of rent to the lessors, was again permitted to enter on a rental year; that moment, upon the facts of their past relations, the law implied a lease from *April* 1, 1884, *to April* 1, 1885.

The power in Schultz & Co., lessors, to make a lease to any one that should conflict with this implied contract was gone.

They still had power to make the "extension" stipulated for in the original lease, but as against Enoch Lodge holding over, they were powerless for a year from April 1, 1884; and all persons contracting for any interest in the premises after that date and prior to April 1, 1885, were bound to take notice of the rights of the tenant in possession.—7 *Ohio* 2 *pt.* 90; 13 *Ohio* 408; 6 *Ohio St.*, 594; 15 *Ohio St.*, 162. But authorities are not needed to sustain the proposition.

Schultz & Co. might very naturally desire the extension of which the Lodge had the option without dispute; and they might, in the middle of a rental year, as to which rights were already fixed, make that extension and wipe out the implied agreement for the balance of that year *with Enoch Lodge* or its representatives; but they could do nothing of the kind with any other person or body on earth. To do such a thing as this latter was *ultra vires*.

One of two things results, inevitably, viz: (1), the lease of May 26, 1884, was to Trustees for the benefit of Enoch Lodge of Per-

fection, an "extension" under the option; or, (2), a lease was made by Schultz & Co. which was *beyond their power* and carried nothing to the alleged lessees as against the Lodge during *the current rental year*, whatever effect it might have after April 1, 1885.

We'll cross that river when we come to it.

IV.

If I had not planted my view of the case on the presumed good faith of these gentlemen who obtained this new lease; and if disloyalty and treason to their oaths of fealty could be imputed to them in the matter, and at the time of taking the lease, I should be disposed to claim, in a kind of reasoning "from the known to the unknown" that they had put their heads together prior to the 26th of May, 1884, and planned for the capture, for some purpose of their own, not only of Enoch Lodge's lease of these premises, but of all its property and rights, and, possibly, the destruction of the organization itself; that in such planning and plotting they proposed and intended to "steal a march" on the Lodge by getting the lease, at that date, as the first step in the treasonable undertaking; that in their zeal and ignorance of legal rights they thought the rental year, under the implied contracts mentioned, expired on the 1st of June, mistaking the date of expiration, which by the old lease was April 1st, although the lease was *made on the 1st of June*, and that they would get down so close to it as the 26th of the preceding month to make sure of ousting the Lodge; but these things would do violence to the presumption mentioned and the theory upon which this argument has proceeded which has been that these officers observed their oaths of fealty at the time of obtaining the lease; and, at the time of *withdrawal*, or thereabouts, for the first time, sought to take *personal* advantage of their work as Trustees.

Some of the words and figures in that lease, and the facts connected with them, corroborate my theory.

For example: Although they took the lease on May 26, 1884, and could have no possible *personal claim* back of that time, they

stipulate in the lease "for the term of five years, *beginning on the 1st day of April*, 1884, and ending on the 31st day of March, 1889."

Enoch Lodge had occupied and paid rent from April 1, 1884, down to that May 26. Certainly, if these men had been taking a lease which was to turn the rights held by Enoch Lodge into their own laps, they would not have gone back to the 1st of April, the time when the Lodge's annual lease began, to cover a part of time indisputably belonging to the Lodge and then already "numbered with the years beyond the flood."

Why did they, on the 26th day of May, 1884, in making that lease, say "*beginning on the 1st day of April*, 1884."

They "*had nothing in God's world in their hands*" to do with past time in such lease *as individuals*. As *Trustees*, the representatives and agents of the Lodge, speaking for *it*, in making a lease for a five year's term they might, rationally and naturally, include two or three months that the Lodge had already occupied, but it was neither rational nor natural that they should do such a thing in their own personal behalf.

That "*beginning on the 1st day of April*, 1884," to borrow from expressive slang, "*gives* the defendants *dead away*."

The phrase was put there, and their names were signed to it, *because* they were acting for Enoch Lodge; and Alexander H. Fritchey, the agent of the lessors, tells the God's truth, thus corroborated by the Signs Manual of the defendants, when he says in effect, "the defendants obtained the lease for Enoch Lodge, and Schultz & Co. made the lease for its sole use, benefit and behoof, and would not have leased to the defendants, as against the Lodge; never have received and never would accept rent from them as tenants."

The lease itself is abundant and conclusive corroboration of him as against the present claim of the defendants, which, upon the present theory, was a mischievous after-thought, evolved from the brain of some enemy of the welfare of Enoch Lodge.

It would be a bootless task to undertake to read in an "exten-

sion" of this argument what is written between the lines of this case so plainly that a stranger may read as to causes and motives and reasons for things.

Was the lease of May 26, 1884, for the sole and exclusive use, benefit and behoof of Enoch Lodge? or, was the Lodge thereby excluded from the premises in question?

We believe we have demonstrated that the lease was in trust for the Lodge's sole and exclusive use, benefit and behoof; but if, by possibility, this belief has no foundation in fact, it is clear that Schultz & Co. had no power to make, and the defendants could not obtain a lease that could impair the Lodge's vested rights.

The injunction prayed for by plaintiffs ought to be made absolute against the defendants.

Respectfully,

J. T. HOLMES,
Of Counsel.

On the 18th of November, in an elaborate opinion, Judge Bingham sustained the claim of the plaintiffs, making, among others, the following points, after stating the case:

OPINION.

"Enoch Lodge of Perfection having occupied the premises and paid rent is tenant from year to year.

"Seven years as tenant under such circumstances entitles the Lodge to be regarded as a tenant from year to year, April 1 to April 1.

"There was no power in Schultz & Co. to lease the premises for this year. They had permitted the Lodge to enter upon a new year, April 1, 1884, and the law implies a contract between the parties which gave Enoch Lodge exclusive possession until April 1, 1885.

"Schultz & Co. could not make a contract with any one to interfere with the right so conferred on the Lodge.

"The alleged lease to the defendants was inoperative and void and could not be enforced by either party to it.—8 *O. S. p.* 257; *Rev. Stat. Sec.* 5008.

"The temporary right given by the Court"—Judge Wylie—"to the defendants to occupy the premises one night each week could not help their case. It was evidently not granted on full hearing.

"There was no possession of the premises in a legal sense, no payment of rent, no performance of their alleged contract of lease by the defendants. The obligation to pay rent does not arise on the lease. Schultz & Co. have no claim against the defendants for rent that could be enforced, for, as stated, the lease is inoperative.

"The failure of the plaintiffs to offer to indemnify the defendants against liability for the rent makes no difference, for the defendants are not liable to Schultz & Co.

"The defendants must have been acting for Enoch Lodge of Perfection at the time they procured the lease. Columbus Lodge of Perfection had not then been organized. The persons procuring the lease were, at the time, officers and members of Enoch Lodge in good standing. They did not withdraw until August 15, following.

"They are presumed to have acted for the property and pecuniary interest of Enoch Lodge, and to have been *loyal* to its interest.

"They could not dabble with the interests of the Lodge without becoming Trustees in legal contemplation.

"The defendants ought to be held as Trustees in what they did if they had procured a legal lease. I should not hesitate so to hold if it were valid.

"Their lease, although illegal, is the basis of their claim, and therefore a cloud, a shadow, on the title. The petition of the plaintiffs is to quiet title and to have the claim of the defendants declared void.

"The plaintiffs are entitled to recover on the petition.

"The decree in this case will find the lease defective—the defendants not in possession—the plaintiffs in possession of the premises as tenants from year to year, and that Schultz & Co. could not, for want of power, grant the premises by lease to any persons other than plaintiffs for the use of Enoch Lodge of Perfection during this year, the claim of the defendants based on an illegal and void instrument, and the injunction against the defendants will be made perpetual.

"It seems to my mind that this must be so. The defendants were Trustees in the transaction. The facts are overwhelming.

"What is said in evidence by Mr. Fritchey, the agent of Schultz & Co., as to occurrences and understandings at the time the lease was made, is fully sustained and corroborated by the great weight of the other evidence. He says the lease was made by the lessors through him, as agent, for the use and benefit of Enoch Lodge alone, and would not otherwise have been made in the names of the defendants. The Lodge has paid the rents. The defendants have paid nothing, and Schultz & Co. would not have accepted and would not now accept rent from them as personal tenants under the lease.

"Columbus Lodge of Perfection was not in existence on the 26th of May, nor for three months after. If the lease was a legal instrument, it must be held as obtained by the defendants for the sole use and benefit of Enoch Lodge. The defendants must have been Trustees; they could not be anything else under the circumstances. Two of them were on the original lease of 1878. They knew of the notice that had been given to Schultz & Co. that Enoch Lodge would take the premises under the option in the old lease; they knew the property and its condition.

"To carry out defendants' theory would be to sanction their acting in the *worst of faith*.

"The law will presume they acted in good faith in obtaining the lease for Enoch Lodge, and that the bad faith arose subsequently when they claimed personal benefits from their acts as Trustees.

"They may satisfy their own consciences while making such claim; it would still be fraudulent in law.

"They sustained a fiduciary relation toward Enoch Lodge, and they were bound thereby to act in the utmost good faith for its interests and welfare."

DECREE.

Following is the decree entered of record November 24, 1884:

Court of Common Pleas, Franklin County, Ohio. B. F. Rees et al. *vs.* W. A. Hershiser et al.

This day came the parties and their attorneys, respectively, in this cause, and thereupon the same came on for hearing on the issues joined by the pleadings, the exhibits and testimony of witnesses and the arguments of counsel; on consideration whereof, and being fully advised in the premises, the Court finds (1) that the lease set forth in the answer and cross-petition of said defendants is defective, illegal, and void, in that it was not executed and acknowledged in accordance with the statute in such cases made and provided; (2) that the defendants were not in possession of said premises as by them in their answer and cross-petition alleged, or otherwise, under and by virtute of said alleged lease or in any other manner; (3) that the plaintiffs, as Trustees and members of Enoch Lodge of Perfection, and on behalf and for the use and benefit of said Lodge, have been tenants from year to year of said premises, paying rent therefor; (4) that at the time said alleged lease was obtained by defendants, to wit: May 26, 1884, said plaintiffs had been in possession of said premises under an implied lease from said Schultz & Co., their landlords, from the 1st day of April, 1884, to the 1st day of April, 1885; (5) that on said 26th day of May, 1884, or at any time after said 1st day of April, 1884, said Schultz & Co. had no power to grant a lease of said premises to any person or persons, or body or bodies, corporate or unincorporated, other than said plaintiffs as Trustees for, or to, said Enoch

Lodge of Perfection itself; (6) that the claim of said defendants to said premises and the possession thereof, is based upon said illegal and void instrument, styled a lease, of May 26, 1884, and is therefore itself illegal and void.

It is, therefore, by the Court here ordered, adjudged and decreed, that the privileges accorded said defendants and the Columbus Lodge of Perfection, and the injunction allowed against the plaintiffs and Enoch Lodge of Perfection by the interlocutory order of this Court herein, dated September 29, 1884, be and the same are hereby canceled, vacated, set aside and held for naught; and said defendants, in their own proper persons, and for the use of said Columbus Lodge of Perfection, and each and all of them be and they hereby are perpetually enjoined, according to the prayer of the petition of said plaintiffs, from interfering in any wise with plaintiffs in the quiet and peaceable possession of said premises, and from attempting to take possession of the same, or otherwise interfering with the rights of plaintiffs in the premises.

It is further ordered, adjudged and decreed that the defendants pay the costs herein within five days from the entry hereof, and in default of such payment, that execution issue therefor, as upon judgments at law.

Thereupon, said defendants gave notice of their intention to appeal this cause to the District Court; and, on motion for that purpose, the Court fixes the bond to be given for such appeal at the sum of $200.