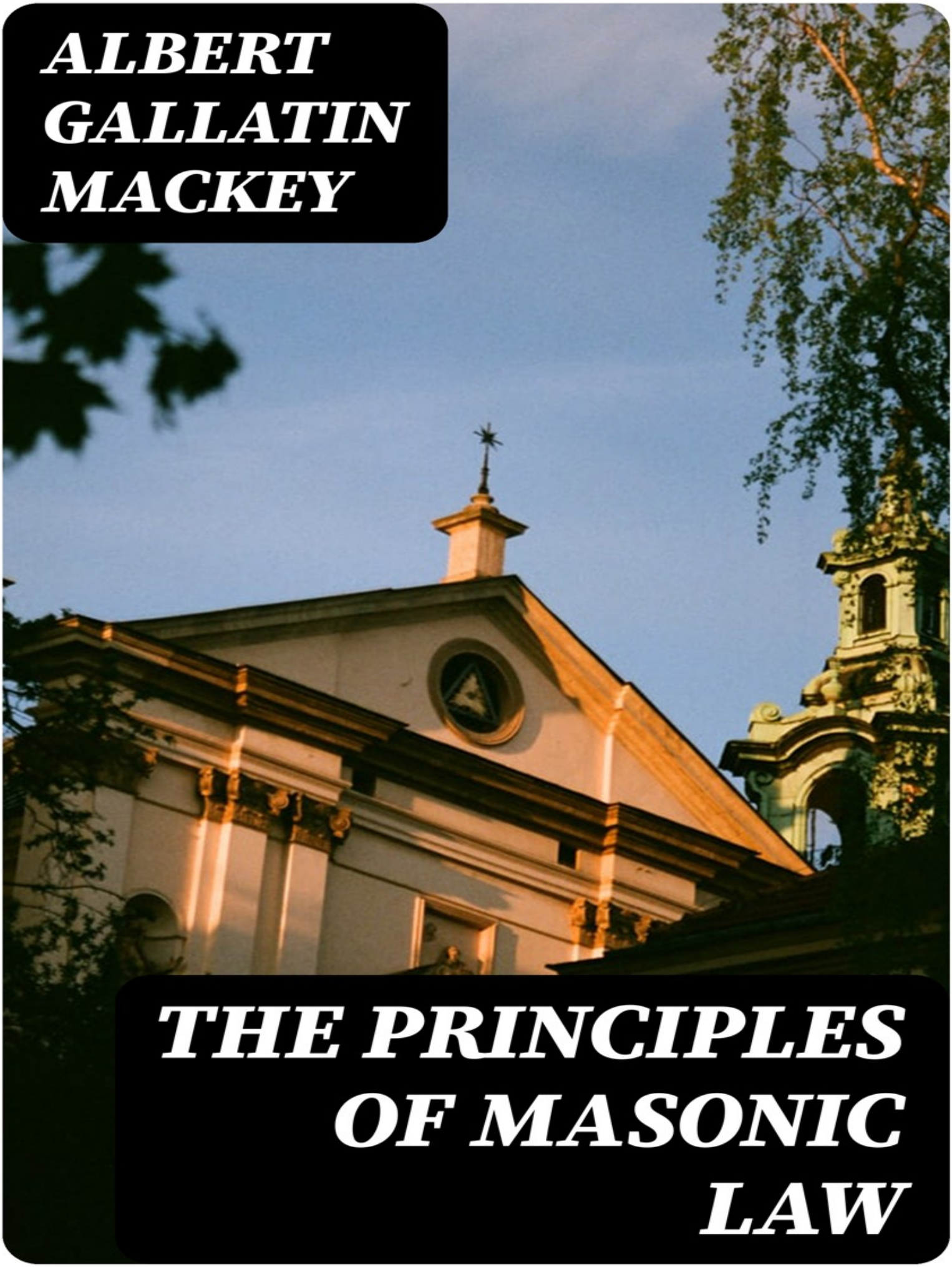
ALBERT GALLATIN MACKEY



THE PRINCIPLES OF MASONIC LAW

Albert Gallatin Mackey

The Principles of Masonic Law

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"Est enim unum jus, quo devincta est hominum societas, quod lex constituit una; quæ lex est recta ratio imperandi atque prohibendi, quam qui ignorat is est injustus."

Cicero de Legibus. c. XV.

To

Brother J.J.J. Gourgas,

Sovereign Grand Inspector General in the Supreme Council for the Northern Jurisdiction of the United States,

I Dedicate This Work,

As a Slight Testimonial of My Friendship and Esteem for Him
As a Man,
And of My Profound Veneration for His Character
As a Mason;
Whose Long and Useful Life Has Been Well Spent in the
Laborious Prosecution of the Science,
And the Unremitting Conservation of the Principles of Our
Sublime Institution.

Preface.

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In presenting to the fraternity a work on the Principles of Masonic Law, it is due to those for whom it is intended, that something should be said of the design with which it has been written, and of the plan on which it has been composed. It is not pretended to present to the craft an encyclopedia of jurisprudence, in which every question that can possibly arise, in the transactions of a Lodge, is decided with an especial reference to its particular circumstances. Were the accomplishment of such an herculean task possible, except after years of intense and unremitting labor, the unwieldy size of the book produced, and the heterogeneous nature of its contents, so far from inviting, would rather tend to distract attention, and the object of communicating a knowledge of the Principles of Masonic Law, would be lost in the tedious collation of precedents, arranged without scientific system, and enunciated without explanation.

When I first contemplated the composition of a work on this subject, a distinguished friend and Brother, whose opinion I much respect, and with whose advice I am always anxious to comply, unless for the most satisfactory reasons, suggested the expediency of collecting the decisions of all Grand Masters, Grand Lodges, and other masonic authorities upon every subject of Masonic Law, and of presenting them, without commentary, to the fraternity.

But a brief examination of this method, led me to perceive that I would be thus constructing simply a digest of decrees, many of which would probably be the results of inexperience, of prejudice, or of erroneous views of the masonic system, and from which the authors themselves

have, in repeated instances, subsequently receded—for Grand Masters and Grand Lodges, although entitled to great respect, are not infallible—and I could not, conscientiously, have consented to assist, without any qualifying remark, in the extension and perpetuation of edicts and opinions, which, however high the authority from which they emanated, I did not believe to be in accordance with the principles of Masonic jurisprudence.

Another inconvenience which would have attended the adoption of such a method is, that the decisions of different Grand Lodges and Grand Masters are sometimes entirely contradictory on the same points of Masonic Law. The decree of one jurisdiction, on any particular question, will often be found at variance with that of another, while a third will differ from both. The consultor of a work, embracing within its pages such distracting judgments, unexplained by commentary, would be in doubt as to which decision he should adopt, so that coming to the inspection with the desire of solving a legal question, he would be constrained to close the volume, in utter despair of extracting truth or information from so confused a mass of contradictions.

This plan I therefore at once abandoned. But knowing that the jurisprudence of Masonry is founded, like all legal science, on abstract principles, which govern and control its entire system, I deemed it to be a better course to present these principles to my readers in an elementary and methodical treatise, and to develop from them those necessary deductions which reason and common sense would justify.

Hence it is that I have presumed to call this work "The Principles of Masonic Law." It is not a code of enactments, nor a collection of statutes, nor yet a digest of opinions; but simply an elementary treatise, intended to enable every one who consults it, with competent judgment, and ordinary intelligence, to trace for himself the bearings of the law upon any question which he seeks to investigate, and to

form, for himself, a correct opinion upon the merits of any particular case.

Blackstone, whose method of teaching I have endeavored, although I confess "ab longo inter-vallo," to pursue, in speaking of what an academical expounder of the law should do, says:

"He should consider his course as a general map of the law, marking out the shape of the country, its connections, and boundaries, its greater divisions, and principal cities; it is not his business to describe minutely the subordinate limits, or to fix the longitude and latitude of every inconsiderable hamlet."

Such has been the rule that has governed me in the compilation of this work. But in delineating this "general map" of the Masonic Law, I have sought, if I may continue the metaphor, so to define boundaries, and to describe countries, as to give the inspector no difficulty in "locating" (to use an Americanism) any subordinate point. I have treated, it is true, of principles, but I have not altogether lost sight of cases.

There are certain fundamental laws of the Institution, concerning which there never has been any dispute, and which have come down to us with all the sanctions of antiquity, and universal acceptation. In announcing these, I have not always thought it necessary to defend their justice, or to assign a reason for their enactment.

The weight of unanimous authority has, in these instances, been deemed sufficient to entitle them to respect, and to obedience.

But on all other questions, where authority is divided, or where doubts of the correctness of my decision might arise, I have endeavored, by a course of argument as satisfactory as I could command, to assign a reason for my opinions, and to defend and enforce my views, by a reference to the general principles of jurisprudence, and the peculiar character of the masonic system. I ask, and should receive

no deference to my own unsupported theories—as a man, I am, of course, fallible—and may often have decided erroneously. But I do claim for my arguments all the weight and influence of which they may be deemed worthy, after an attentive and unprejudiced examination. To those who may at first be ready—because I do not agree with all their preconceived opinions—to doubt or deny my conclusions, I would say, in the language of Themistocles, "Strike, but hear me."

Whatever may be the verdict passed upon my labors by my Brethren, I trust that some clemency will be extended to the errors into which I may have fallen, for the sake of the object which I have had in view: that, namely, of presenting to the Craft an elementary work, that might enable every Mason to know his rights, and to learn his duties.

The intention was, undoubtedly, a good one. How it has been executed, it is not for me, but for the masonic public to determine.

Albert G. Mackey.

Charleston, S.C., January 1st., 1856.

Introduction.

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The Authorities for Masonic Law.

The laws which govern the institution of Freemasonry are of two kinds, *unwritten* and *written,* and may in a manner be compared with the "lex non scripta," or common law, and the "lex seripta," or statute law of English and American jurists.

The "lex non scripta," or *unwritten law* of Freemasonry is derived from the traditions, usages and customs of the fraternity as they have existed from the remotest antiquity, and as they are universally admitted by the general consent of the members of the Order. In fact, we may apply to these unwritten laws of Masonry the definition given by Blackstone of the "leges non scriptæ" of the English constitution—that "their original institution and authority are not set down in writing, as acts of parliament are, but they receive their binding power, and the force of laws, by long and immemorial usage and by their universal reception throughout the kingdom." When, in the course of this work, I refer to these unwritten laws as authority upon any point, I shall do so under the appropriate designation of "ancient usage."

The "lex scripta," or written law of Masonry, is derived from a variety of sources, and was framed at different periods. The following documents I deem of sufficient authority to substantiate any principle, or to determine any disputed question in masonic law.

1. The "Ancient Masonic charges, from a manuscript of the Lodge of Antiquity," and said to have been written in the reign of James II.[1]

2. The regulations adopted at the General Assembly held in 1663, of which the Earl of St. Albans was Grand Master.[2]

3. The interrogatories propounded to the Master of a lodge at the time of his installation, and which, from their universal adoption, without alteration, by the whole fraternity, are undoubtedly to be considered as a part of the fundamental law of Masonry.

4. "The Charges of a Freemason, extracted from the Ancient Records of Lodges beyond sea, and of those in England, Scotland, and Ireland, for the use of the Lodges in London," printed in the first edition of the Book of Constitutions, and to be found from p. 49 to p. 56 of that work.[3]

5. The thirty-nine "General Regulations," adopted "at the annual assembly and feast held at Stationers' hall on St. John the Baptist's day, 1721," and which were published in the first edition of the Book of Constitutions, p. 58 to p.

6. The subsequent regulations adopted at various annual communications by the Grand Lodge of England, up to the year 1769, and published in different editions of the Book of Constitutions. These, although not of such paramount importance and universal acceptation as the Old Charges and the Thirty-nine Regulations, are, nevertheless, of great value as the means of settling many disputed questions, by showing what was the law and usage of the fraternity at the times in which they were adopted.

Soon after the publication of the edition of 1769 of the Book of Constitutions, the Grand Lodges of America began to separate from their English parent and to organize independent jurisdictions. From that period, the regulations adopted by the Grand Lodge of England ceased to have any binding efficacy over the craft in this country, while the laws passed by the American Grand Lodges lost the character of general regulations, and were invested only with local authority in their several jurisdictions.

Before concluding this introductory section, it may be deemed necessary that something should be said of the "Ancient Landmarks of the Order," to which reference is so often made.

Various definitions have been given of the landmarks. Some suppose them to be constituted of all the rules and regulations which were in existence anterior to the revival of Masonry in 1717, and which were confirmed and adopted by the Grand Lodge of England at that time. Others, more stringent in their definition, restrict them to the modes of recognition in use among the fraternity. I am disposed to adopt a middle course, and to define the Landmarks of Masonry to be, all those usages and customs of the craft—whether ritual or legislative—whether they relate to forms and ceremonies, or to the organization of the society—which have existed from time immemorial, and the alteration or abolition of which would materially affect the distinctive character of the institution or destroy its identity. Thus, for example, among the legislative landmarks, I would enumerate the office of Grand Master as the presiding officer over the craft, and among the ritual landmarks, the legend of the third degree. But the laws, enacted from time to time by Grand Lodges for their local government, no matter how old they may be, do not constitute landmarks, and may, at any time, be altered or expunged, since the 39th regulation declares expressly that "every annual Grand Lodge has an inherent power and authority to make new regulations or to alter these (viz., the thirty-nine articles) for the real benefit of this ancient fraternity, provided always that the old landmarks be carefully preserved."

Book First
The Law of Grand Lodges.

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It is proposed in this Book, first to present the reader with a brief historical sketch of the rise and progress of the system of Grand Lodges; and then to explain, in the subsequent sections, the mode in which such bodies are originally organized, who constitute their officers and members, and what are their acknowledged prerogatives.

Chapter I.
Historical Sketch.

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Grand Lodges under their present organization, are, in respect to the antiquity of the Order, of a comparatively modern date. We hear of no such bodies in the earlier ages of the institution. Tradition informs us, that originally it was governed by the despotic authority of a few chiefs. At the building of the temple, we have reason to believe that King Solomon exercised an unlimited and irresponsible control over the craft, although a tradition (not, however, of undoubted authority) says that he was assisted in his government by the counsel of twelve superintendants, selected from the twelve tribes of Israel. But we know too little, from authentic materials, of the precise system adopted at that remote period, to enable us to make any historical deductions on the subject.

The first historical notice that we have of the formation of a supreme controlling body of the fraternity, is in the "Gothic Constitutions"[4] which assert that, in the year 287, St. Alban, the protomartyr of England, who was a zealous patron of the craft, obtained from Carausius, the British Emperor, "a charter for the Masons to hold a general council, and gave it the name of assembly." The record further states, that St. Alban attended the meeting and assisted in making Masons, giving them "good charges and regulations." We know not, however, whether this assembly ever met again; and if it did, for how many years it continued to exist. The subsequent history of Freemasonry is entirely silent on the subject.

The next general assemblage of the craft, of which the records of Freemasonry inform us, was that convened in

926, at the city of York, in England, by Prince Edwin, the brother of King Athelstane, and the grandson of Alfred the Great. This, we say, was the next general assemblage, because the Ashmole manuscript, which was destroyed at the revival of Freemasonry in 1717, is said to have stated that, at that time, the Prince obtained from his brother, the king, a permission for the craft "to hold a yearly communication and a general assembly." The fact that such a power of meeting was then granted, is conclusive that it did not before exist: and would seem to prove that the assemblies of the craft, authorised by the charter of Carausius, had long since ceased to be held. This yearly communication did not, however, constitute, at least in the sense we now understand it, a Grand Lodge. The name given to it was that of the "General Assembly of Masons." It was not restricted, as now, to the Masters and Wardens of the subordinate lodges, acting in the capacity of delegates or representatives, but was composed, as Preston has observed, of as many of the fraternity at large as, being within a convenient distance, could attend once or twice a year, under the auspices of one general head, who was elected and installed at one of these meetings, and who, for the time being, received homage as the governor of the whole body. Any Brethren who were competent to discharge the duty, were allowed, by the regulations of the Order, to open and hold lodges at their discretion, at such times and places as were most convenient to them, and without the necessity of what we now call a Warrant of Constitution, and then and there to initiate members into the Order.[5] To the General Assembly, however, all the craft, without distinction, were permitted to repair; each Mason present was entitled to take part in the deliberations, and the rules and regulations enacted were the result of the votes of the whole body. The General Assembly was, in fact, precisely

similar to those political congregations which, in our modern phraseology, we term "mass meetings."

These annual mass meetings or General Assemblies continued to be held, for many centuries after their first establishment, at the city of York, and were, during all that period, the supreme judicatory of the fraternity. There are frequent references to the annual assemblies of Freemasons in public documents. The preamble to an act passed in 1425, during the reign of Henry VI., just five centuries after the meeting at York, states that, "by the *yearly congregations* and confederacies made by the Masons in their *general assemblies,* the good course and effect of the statute of laborers were openly violated and broken." This act which forbade such meetings, was, however, never put in force; for an old record, quoted in the Book of Constitutions, speaks of the Brotherhood having frequented this "mutual assembly," in 1434, in the reign of the same king. We have another record of the General Assembly, which was held in York on the 27th December, 1561, when Queen Elizabeth, who was suspicious of their secrecy, sent an armed force to dissolve the meeting. A copy is still preserved of the regulations which were adopted by a similar assembly held in 1663, on the festival of St. John the Evangelist; and in these regulations it is declared that the private lodges shall give an account of all their acceptations made during the year to the General Assembly. Another regulation, however, adopted at the same time, still more explicitly acknowledges the existence of a General Assembly as the governing body of the fraternity. It is there provided, "that for the future, the said fraternity of Freemasons shall be regulated and governed by one Grand Master and as many Wardens as the said society shall think fit to appoint at every Annual General Assembly."

And thus the interests of the institution continued, until the beginning of the eighteenth century, or for nearly eight hundred years, to be entrusted to those General Assemblies

of the fraternity, who, without distinction of rank or office, annually met at York to legislate for the government of the craft.

But in 1717, a new organization of the governing head was adopted, which gave birth to the establishment of a Grand Lodge, in the form in which these bodies now exist. So important a period in the history of Masonry demands our special attention.

After the death, in 1702, of King William, who was himself a Mason, and a great patron of the craft, the institution began to languish, the lodges decreased in number, and the General Assembly was entirely neglected for many years. A few old lodges continued, it is true, to meet regularly, but they consisted of only a few members.

At length, on the accession of George I., the Masons of London and its vicinity determined to revive the annual communications of the society. There were at that time only four lodges in the south of England, and the members of these, with several old Brethren, met in February, 1717, at the Apple Tree Tavern, in Charles street, Covent Garden, and organized by putting the oldest Master Mason, who was the Master of a lodge, in the chair; they then constituted themselves into what Anderson calls, "a Grand Lodge *pro tempore;"* resolved to hold the annual assembly and feast, and then to choose a Grand Master.

Accordingly, on the 24th of June, 1717, the assembly and feast were held; and the oldest Master of a lodge being in the chair, a list of candidates was presented, out of which Mr. Anthony Sayer was elected Grand Master, and Capt. Joseph Elliott and Mr. Jacob Lamball, Grand Wardens.

The Grand Master then commanded the Masters and Wardens of lodges to meet the Grand Officers every quarter, in communication, at the place he should appoint in his summons sent by the Tiler.

This was, then, undoubtedly, the commencement of that organization of the Masters and Wardens of lodges into a

Grand Lodge, which has ever since continued to exist.

The fraternity at large, however, still continued to claim the right of being present at the annual assembly; and, in fact, at that meeting, their punctual attendance at the next annual assembly and feast was recommended.

At the same meeting, it was resolved "that the privilege of assembling as Masons, which had been hitherto unlimited, should be vested in certain lodges or assemblies of Masons convened in certain places; and that every lodge to be hereafter convened, except the four old lodges at this time existing, should be legally authorized to act by a warrant from the Grand Master for the time being, granted to certain individuals by petition, with the consent and approbation of the Grand Lodge in communication; and that, without such warrant, no lodge should be hereafter deemed regular or constitutional."

In consequence of this regulation, several new lodges received Warrants of Constitution, and their Masters and Wardens were ordered to attend the communications of the Grand Lodge. The Brethren at large vested all their privileges in the four old lodges, in trust that they would never suffer the old charges and landmarks to be infringed; and the old lodges, in return, agreed that the Masters and Wardens of every new lodge that might be constituted, should be permitted to share with them all the privileges of the Grand Lodge, except precedence of rank. The Brethren, says Preston, considered their further attendance at the meetings of the society unnecessary after these regulations were adopted; and therefore trusted implicitly to their Masters and Wardens for the government of the craft; and thenceforward the Grand Lodge has been composed of all the Masters and Wardens of the subordinate lodges which constitute the jurisdiction.

The ancient right of the craft, however, to take a part in the proceedings of the Grand Lodge or Annual Assembly, was fully acknowledged by a new regulation, adopted about

the same time, in which it is declared that all alterations of the Constitutions must be proposed and agreed to, at the third quarterly communication preceding the annual feast, and be offered also to the perusal of *all* the Brethren before dinner, *even of the youngest Entered Apprentice*[6]

This regulation has, however, (I know not by what right,) become obsolete, and the Annual Assembly of Masons has long ceased to be held; the Grand Lodges having, since the beginning of the eighteenth century, assumed the form and organization which they still preserve, as strictly representative bodies.

Chapter II.
Of the Mode of Organizing Grand Lodges.

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The topic to be discussed in this section is, the answer to the question, How shall a Grand Lodge be established in any state or country where such a body has not previously existed, but where there are subordinate lodges working under Warrants derived from Grand Lodges in other states? In answering this question, it seems proper that I should advert to the course pursued by the original Grand Lodge of England, at its establishment in 1717, as from that body nearly all the Grand Lodges of the York rite now in existence derive their authority, either directly or indirectly, and the mode of its organization has, therefore, universally been admitted to have been regular and legitimate.

In the first place, it is essentially requisite that the active existence of subordinate lodges in a state should precede the formation of a Grand Lodge; for the former are the only legitimate sources of the latter. A mass meeting of Masons cannot assemble and organize a Grand Lodge. A certain number of lodges, holding legal warrants from a Grand Lodge or from different Grand Lodges, must meet by their representatives and proceed to the formation of a Grand Lodge. When that process has been accomplished, the subordinate lodges return the warrants, under which they had theretofore worked, to the Grand Lodges from which they had originally received them, and take new ones from the body which they have formed.

That a mass meeting of the fraternity of any state is incompetent to organize a Grand Lodge has been definitively settled—not only by general usage, but by the

express action of the Grand Lodges of the United States which refused to recognize, in 1842, the Grand Lodge of Michigan which had been thus irregularly established in the preceding year. That unrecognized body was then dissolved by the Brethren of Michigan, who proceeded to establish four subordinate lodges under Warrants granted by the Grand Lodge of New York. These four lodges subsequently met in convention and organized the present Grand Lodge of Michigan in a regular manner.

It seems, however, to have been settled in the case of Vermont, that where a Grand Lodge has been dormant for many years, and all of its subordinates extinct, yet if any of the Grand Officers, last elected, survive and are present, they may revive the Grand Lodge and proceed constitutionally to the exercise of its prerogatives.

The next inquiry is, as to the number of lodges required to organize a new Grand Lodge. Dalcho says that *five* lodges are necessary; and in this opinion he is supported by the Ahiman Rezon of Pennsylvania, published in 1783 by William Smith, D.D., at that time the Grand Secretary of that jurisdiction, and also by some other authorities. But no such regulation is to be found in the Book of Constitutions, which is now admitted to contain the fundamental law of the institution. Indeed, its adoption would have been a condemnation of the legality of the Mother Grand Lodge of England, which was formed in 1717 by the union of only *four* lodges. The rule, however, is to be found in the Ahiman Rezon of Laurence Dermott, which was adopted by the "Grand Lodge of Ancient Freemasons," that seceded from the lawful Grand Lodge in 1738. But as that body was undoubtedly, under our present views of masonic law, schismatic and illegal, its regulations have never been considered by masonic writers as being possessed of any authority.

In the absence of any written law upon the subject, we are compelled to look to precedent for authority; and,

although the Grand Lodges in the United States have seldom been established with a representation of less than four lodges, the fact that that of Texas was organized in 1837 by the representatives of only *three* lodges, and that the Grand Lodge thus instituted was at once recognized as legal and regular by all its sister Grand Lodges, seems to settle the question that three subordinates are sufficient to institute a Grand Lodge.

Three lodges, therefore, in any territory where a Grand Lodge does not already exist, may unite in convention and organize a Grand Lodge. It will then be necessary, that these lodges should surrender the warrants under which they had been previously working, and take out new warrants from the Grand Lodge which they have constituted; and, from that time forth, all masonic authority is vested in the Grand Lodge thus formed.

The Grand Lodge having been thus constituted, the next inquiries that suggest themselves are as to its members and its officers, each of which questions will occupy a distinct discussion.

Chapter III.
Of the Members of a Grand Lodge.

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It is an indisputable fact that the "General Assembly" which met at York in 926 was composed of all the members of the fraternity who chose to repair to it; and it is equally certain that, at the first Grand Lodge, held in 1717, after the revival of Masonry, all the craft who were present exercised the right of membership in voting for Grand Officers,[7] and must, therefore, have been considered members of the Grand Lodge. The right does not, however, appear to have been afterwards claimed. At this very assembly, the Grand Master who had been elected, summoned only the Master and Wardens of the lodges to meet him in the quarterly communications; and Preston distinctly states, that soon after, the Brethren of the four old lodges, which had constituted the Grand Lodge, considered their attendance on the future communications of the society unnecessary, and therefore concurred with the lodges which had been subsequently warranted in delegating the power of representation to their Masters and Wardens, "resting satisfied that no measure of importance would be adopted without their approbation."

Any doubts upon the subject were, however, soon put at rest by the enactment of a positive law. In 1721, thirty-nine articles for the future government of the craft were approved and confirmed, the twelfth of which was in the following words:

"The Grand Lodge consists of, and is formed by, the Masters and Wardens of all the regular particular lodges upon record, with the Grand Master at their head, and his

Deputy on his left hand, and the Grand Wardens in their proper places."

From time to time, the number of these constituents of a Grand Lodge were increased by the extension of the qualifications for membership. Thus, in 1724, Past Grand Masters, and in 1725, Past Deputy Grand Masters, were admitted as members of the Grand Lodge. Finally it was decreed that the Grand Lodge should consist of the four present and all past grand officers; the Grand Treasurer, Secretary, and Sword-Bearer; the Master, Wardens, and nine assistants of the Grand Stewards' lodge, and the Masters and Wardens of all the regular lodges.

Past Masters were not at first admitted as members of the Grand Lodge. There is no recognition of them in the old Constitutions. Walworth thinks it must have been after 1772 that they were introduced.[8] I have extended my researches to some years beyond that period, without any success in finding their recognition as members under the Constitution of England. It is true that, in 1772, Dermott prefixed a note to his edition of the Ahiman Rezon, in which he asserts that "Past Masters of warranted lodges on record are allowed this privilege (of membership) whilst they continue to be members of any regular lodge." And it is, doubtless, on this imperfect authority, that the Grand Lodges of America began at so early a period to admit their Past Masters to seats in the Grand Lodge. In the authorized Book of Constitutions, we find no such provision. Indeed, Preston records that in 1808, at the laying of the foundation-stone of the Covent Garden Theatre, by the Prince of Wales, as Grand Master, "the Grand Lodge was opened by Charles Marsh, Esq., attended by the *Masters and Wardens* of all the regular lodges;" and, throughout the description of the ceremonies, no notice is taken of Past Masters as forming any part of the Grand Lodge. The first notice that we have been enabled to obtain of Past Masters, as forming any part