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# New Jersey Court of Errors and Appeals

NEW JERSEY SUPREME COURT 10

PASSAIC COUNTY

MARIA PURCARO,

Plaintiff,

vs.

GRAND LODGE OF THE STATE OF  
NEW JERSEY, ORDER SONS OF  
ITALY IN AMERICA, a corpora-  
tion.

Defendant.

Action at  
Law

20

## NOTICE OF APPEAL.

The defendant, Grand Lodge of the State of  
New Jersey, Order Sons of Italy in America, a  
corporation, does hereby appeal from the judg- 30  
ment entered in the above stated cause, July 8th,  
1929, to the New Jersey Court of Errors and Ap-  
peals, the last resort in all causes.

Yours respectfully,

T. MANCUSI-UNGARO,  
Attorney for Defendant.

Dated, September 25th, 1929.

40

**GROUNDS OF APPEAL.**

(Filed Oct. 30/29)

**NEW JERSEY SUPREME COURT**

PASSAIC COUNTY

10

MARIA PURCARO,

Plaintiff,

vs.

GRAND LODGE OF THE STATE OF  
NEW JERSEY, ORDER SONS OF  
ITALY IN AMERICA, a corpora-  
tion,

20

Defendant.

On appeal  
from the  
Supreme  
Court

1. The court committed error in finding that when the deceased Domenico Purcaro, died, he was a member in good standing of Loggia Oriente, a local and branch lodge of the defendant.

30 2. The court committed error in finding that previous to his death, said Purcaro was wrongfully and illegally expelled from said society, without any ground therefor, and without any jurisdiction so to do, and that, therefore, the said expulsion is wrongful and illegal and of no effect.

3. The court committed error in finding that the plaintiff is not required to appear within the tribunals of the order before maintaining suit.

40 4. The court committed error in rendering judgment in favor of the plaintiff and against the defendant.

T. MANCUSI-UNGARO,  
Attorney for Defendant.

**RULE FOR JUDGMENT.**

NEW JERSEY SUPREME COURT

MARIA PURCARO,

Plaintiff,

vs.

GRAND LODGE OF THE STATE OF  
NEW JERSEY, ORDER SONS OF  
ITALY IN AMERICA, a corpora-  
tion,

Defendant.

Action at      10  
Law

On Postea.

Feder & Rinzler, Attorneys.

\$536.00

20

69.84

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\$605.84

Damages corrected &  
Reduced by Order of Court  
to \$434.00

69.84

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\$503.84

30

See Min. May Term 1929, under  
date of Aug. 22, 1929.

Judgment entered this eighth day of July A. D.  
nineteen hundred and twenty-nine in favor of  
plaintiff and against the defendant for the sum  
of five hundred and thirty-six dollars damages  
and sixty-nine dollars and eighty-four cents costs.

WM. S. GUMMERE,

C. J. 40

## POSTEA AND CONCLUSIONS.

(Filed July 8, 1929)

## NEW JERSEY SUPREME COURT

PASSAIC COUNTY

10

MARIA PURCARO,

Plaintiff,

vs.

GRAND LODGE OF THE STATE OF  
NEW JERSEY, ORDER SONS OF  
ITALY IN AMERICA, a corpora-  
tion,Action at  
Law

20

Defendant.

This case was submitted to me for decision upon a state of facts agreed upon in writing by counsel for the parties. The parties, by their counsel, waived a trial by jury.

From the said facts as so stipulated and agreed upon, I find that when the deceased, Dominico Purcaro, died, he was a member in good standing of Loggia Oriente, a local and branch lodge of the Grand Lodge of the State of New Jersey, Order Sons of Italy in America, a corporation, and that previous to his death, he was wrongfully and illegally expelled from said society without any ground therefor and without any jurisdiction so to do, and that, therefore, the said expulsion is wrongful and illegal and of no effect.

40

*Postea and Conclusions*

I further find that the plaintiff, Maria Purcaro, the decedent's beneficiary is entitled to recover of the defendant, by virtue of the decedent's membership in good standing in the aforesaid society, under the provisions of the by-laws and constitution of the said defendant, the sum of FOUR HUNDRED (\$400.00) DOLLARS, as a death benefit, together with interest thereon at the legal rate from November 9th, 1923, the date of decedent's death, which is computed at the sum of ONE HUNDRED THIRTY SIX (\$136.00) DOLLARS, and that plaintiff is not required to appeal within the tribunals of the Order before maintaining suit. 10

And it is ORDERED that judgment be accordingly entered in favor of the plaintiff and against the defendant in the sum of FIVE HUNDRED THIRTY-SIX (\$536.00) DOLLARS, besides costs of suit. 20

NEWTON H. PORTER,  
Judge

**AGREED STATE OF FACTS.**

NEW JERSEY SUPREME COURT

PASSAIC COUNTY

10	MARIA PURCARO, <div style="text-align: right;">Plaintiff,</div>	}	Action at Law
	vs.		
	GRAND LODGE OF THE STATE OF NEW JERSEY, ORDER SONS OF ITALY IN AMERICA, a corpora- tion, <div style="text-align: right;">Defendant.</div>		

20

It is hereby stipulated and agreed by and between Feder & Rinzler, Attorneys of Plaintiff, and T. Mancusi-Ungaro, Attorney of Defendant, that a trial by jury be waived in this case and that the case shall be submitted to Circuit Judge Newton H. Porter, for decision upon the following agreed state of facts:

30

1. On November 4th, 1923, and for a long time previous thereto, the defendant was and ever since has been an incorporated fraternal and benevolent association organized and incorporated for fraternal and benevolent purposes.

2. Plaintiff is the widow of Domenico Purcaro, who died intestate on February 23d, 1928, in the City of Passaic, New Jersey.

3. On November 9th, 1923, plaintiff's husband, Domenico Purcaro, now deceased, became a mem-  
 40 ber of Loggia Oriente No. 1244 Order Sons of

*Agreed State of Facts*

Italy of Passaic, New Jersey, a subordinate Lodge of the defendant organization, and designated plaintiff as his beneficiary of the death benefit.

4. On November 11th, 1927, written charges 10  
were preferred against him, according to Article 343 paragraph G of the General Laws of the Order, a copy of which is hereto attached, made part hereof and marked Schedule "A."

5. An arbitration committee was appointed and written notice of a hearing was sent to the defendant, a copy of which notice is hereto annexed, made part hereof and marked Schedule "B." The accused failed to appear, the meeting was 20  
adjourned to a later date and the accused again failed to appear, whereupon, in accordance with the rules of the Order, the arbitration committee proceeded to hear the testimony and found him guilty of the charges, a copy of which is hereto attached and marked Schedule "C."

6. Article 343, paragraph G of the General Laws of the Order provides as follows:

Is punished by expulsion from the Order the 30  
officer or brother who:

(a) Has been twice suspended.

(b) Has been guilty of concealment or misrepresentations in his application for admittance.

(c) Has become guilty of fraud or embezzlement to the detriment of the entity.

(d) Forges, alters, destroys, removes acts or 40  
documents, account books or minutes.

*Agreed State of Facts*

(e) Is notoriously addicted to drunkenness or laziness or shows immorality in his conduct.

(f) Who unlawfully obtains taking advantage of such office as he may hold, monies from brothers or from their heirs, thereby seriously harming the moral reputation of the entity.

(g) ABUSES THE ORDER PUBLICLY BY WORD OF MOUTH OR THROUGH THE PRESS.

(h) Incites the brothers of a Lodge either at a meeting or privately to sever their connection with the Order.

(i) Favors in any manner whatsoever the organization or the progress of institutions which are in open conflict with the Order, refuses to obey or instigates the brothers to rebel against the provisions of the laws or of the resolutions of the Supreme Council, of the Grand Council or of the other authorities of the Order adopted in accordance with the laws in force.

(j) Refuses to enforce judgment and decrees enforceable by the laws.

(n) Is convicted by the ordinary courts of law for an infamous crime.

7. A report of the committee was received by the lodge and unanimously adopted, and the accused was expelled from the Lodge and from the Order. From about the 5th day of December, 1927, the said Domenico Purcaro, having been expelled from the Lodge, was not considered anymore a member of the same, or of the Order, and his name was sent to the Grand Lodge of the State

*Agreed State of Facts*

of New Jersey, the defendant herein, as of a member expelled from the Order.

g. Article 25 reads as follows:

“A brother or sister who shall resign, or who is in arrears, cancelled or expelled 10  
from the Lodge for any reason whatsoever shall lose any right he may have to the benefits of the F. U. M. including that of a refund of his assessment for registration or quotas.”

9. No appeal was taken to Grand Council or any other tribunal of the Order, by the accused, from the action of the Committee or of the Lodge, in compliance with Article 28, which reads as follows: 20

“A member, or his heirs, to whom a committee should refuse to pay the death benefits for reasons contemplated by these by-laws, can appeal to the Grand Council of the state. They must first submit to the tribunals of the Order before proceeding in the Civil Courts” and Article 6 reads as follows:

“The Grand Council shall decide all controversies between the committee and the heirs entitled to the death benefit and also any complaints or charges against members of the committee.” 30

10. The Grand Lodge of the State of New Jersey has, among others, a special committee, elected by the Grand Lodge in session, which is called the Mortuary Fund Committee, whose duty 40

*Agreed State of Facts*

it is to pay death benefits, as provided for in the rules and regulations of said committee, to all those who are entitled to the same according to the said rules. Among other regulations is Article 24, which reads as follows:

10

“In order to be entitled to the benefits, the member registered with the Mortuary Fund must appear to have been so registered and in good standing with his assessments, at the time of his death, and also in good standing with his Lodge and his name must be contained in the list sent by the Secretary of the Lodge as per Article 17.”

20

11. Article 31 of said rules and regulations reads as follows:

“The Lodge whose member died shall specify in a report signed by the Venerable and two secretaries, the name of the deceased, his age, the date of his initiation in the Lodge, the date of death, the date and the amount of the last payment by him made for dues, and if he was in good standing with the Lodge. As soon as possible the financial secretary with the help of the relatives of the deceased, shall send to the committee:

30

(a) Death certificate from the City Clerk where the death has occurred.

(b) Marriage certificate of the City Clerk or civil authority.

40

*Agreed State of Facts*

In default of the same an affidavit from the husband or wife, stating that the deceased was his wife or her husband at the time of the death. This affidavit must be signed by two witnesses."

12. By reason of said expulsion, the said Loggia Oriente No. 1244, did not send any statement or list to the defendant Grand Lodge showing that Domenico Purcaro was a member in good standing, or that he was entitled to have the benefits of the Mortuary Fund.

10

13. Payments for dues, etc., both to the Lodge and to the Mortuary Fund are made in accordance with Article 33, of said rules and regulations, which reads as follows:

20

"Every member of the Mortuary Fund, independently from other assessments, must pay all contributions demanded by the Financial Secretary of the Lodge as stated by the committee, and notified to the Lodge as per Article 19. The payment must be made in open Lodge and not later than the second meeting of the month. If he does not pay within that time, he shall be considered in arrears and subject to the penalties as in Article 25."

30

14. The payments to the committee are made by the Lodge collectively for all members in good standing, and are not made directly to the committee by any individual member, as per Article 34, which reads as follows:

40

*Agreed State of Facts*

10           “The Lodges have the duty to pay the committee all quotas within thirty days after being notified by the committee. After such time the committee shall not be responsible for the payment of such benefits for deaths occurring during such arrearages. If however, it shall be proven that the deceased had paid his quota to the Lodge, the Lodge shall be responsible for the payment of such benefit to the heirs of the deceased, and its officers subject to disciplinary measures.”

20           15. The defense is that the plaintiff is not entitled to recover the death benefit upon the ground that at the time of his death on February 23, 1928, the deceased was not a member of the Order, having been expelled on December 5th, 1927, and also upon the further ground that the plaintiff did not appeal to the tribunals of the Order before bringing suit.

30           16. If the plaintiff is entitled to recover in this case, then she is entitled to recover the death benefit in the amount of four hundred (\$400.00) Dollars, upon the death of her husband, plus interest at the legal rate from the date of decedent's death.

FEDER & RINZLER,  
Attorneys for Plaintiff.

T. MANCUSI-UNGARO,  
Attorney for Defendant.

*Agreed State of Facts—Schedules “A” and “B”*

## SCHEDULE A”

“Loggia Oriente, Order Sons of Italy.

I, the subscriber, Francesco Meli, Orator of Lodge 1244, having heard, during a meeting while on new business, from Brother Roberto DePompa that Brother Domenico Purcaro has called the members of Loggia Oriente, a bunch of thieves in public, by virtue of my office as representative of the Order, I referred this charge to the Arbitration Committee of the Lodge so that the proper action may be taken.

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 SCHEDULE “B”

Loggia “Oriente” No. 1244  
Order Sons of Italy in America.

Passaic N. J. Nov. 11, 1927.

Domenico Purcaro,  
Lucille Place.

30

Dear Brother:

You have been cited to appear before the Arbitration Committee, which will sit on the 22d day of November, at the hour of 8:15 P. M., in the office of Lawyer Vincent Paterno, in the Passaic National Bank, on the 6th floor, to answer and defend the charge which now exists, and is

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*Agreed State of Facts—Schedule "C"*

made against you, of having called the members of Loggia Oriente No. 1244, Order Sons of Italy in America, a group of thieves in public, violating therefore, article No. 343 of the general laws, paragraph G, and not presenting yourself, you  
10 will be condemned.

(Signed) VINCENT MECCA  
Financial Secretary.

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SCHEDULE "C"

Loggia Oriente No. 1244  
20

Ordine Figli D'Italia in America.

*Re: Domenico Purcaro*

Gentlemen :

The Arbitration Committee, consisting of the undersigned, meeting at the place, date and time designated in the notice served and delivered to  
30 the accused, Domenico Purcaro, and having heard the testimony of the witnesses against the said accused, and the accused not having presented himself, although duly advised to appear and after much consideration and deliberation, finds from the evidence and testimony as follows :

1. That the accused has received the notice of the charges against him, as prescribed in the by laws of Loggia Oriente No. 1244, Ordine Figli  
40 D'Italia in America.

*Amended Complaint*

2. That the accused is guilty of the charges mentioned and specified in the said notice received by him.

3. That the language used by the said accused is in violation of article 343, paragraph G of the by laws. 10

Arbitration Committee.

NICHOLAS MARTINI  
VINCENZO PATERNO  
MICHELE MANGUSO.

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**AMENDED COMPLAINT.** 20

(Filed August 7, 1928)

NEW JERSEY SUPREME COURT

PASSAIC COUNTY

MARIA PURCARO,  
Plaintiff,

vs.

GRAND LODGE OF THE STATE OF  
NEW JERSEY, ORDER SONS OF  
ITALY IN AMERICA, a corpora-  
tion,  
Defendant.

Action at  
Law.

30

Plaintiff residing in the City of Passaic, County of Passaic, and State of New Jersey, says that: 40

*Amended Complaint*

1. On the 4th day of November, 1923, and for a long time prior thereto, the defendant was and ever since has been an incorporated fraternal and beneficial association and organization created for beneficial purposes.
- 20 2. On said date, and for a long time previous thereto, Dominico Purcaro, now deceased, was a member in good standing in the defendant association and organization and in good standing in the local or subordinate branch of said defendant organization, to wit, Loggia Oriente, No. 1244, and his dues and assessments in both said associations were fully paid.
- 20 3. On or about December 5th, 1927, notwithstanding the said Dominico Purcaro was a member in good standing of the both associations and whose dues were fully paid up in both said associations, said associations illegally and wrongfully expelled him from membership from the said association without a hearing being afforded him and without notice of said expulsion and upon a ground or grounds not recognized as a ground for expulsion by the constitution or by-laws of  
30 either of said associations.
4. There was no jurisdiction or legal right for said expulsion and said expulsion therefore was void.
5. By reason of the said expulsion (which was unlawful) the Loggia Oriente, No. 1244, failed and neglected to send any statement or list to the defendant showing that the said Dominico Purcaro  
40 was a member in good standing with dues fully paid up.

*Amended Complaint*

6. By reason of the aforesaid premises, the defendant has failed and refused to pay the plaintiff who is the widow and beneficiary of the said Dominico Purcaro, the death benefit in the sum of Four Hundred (\$400.00) Dollars, although said Dominico Purcaro died in February, 1928. 10

7. Since December 5th, 1927, the defendant and Loggia Oriente No. 1244, wrongfully and unlawfully refused to recognize the said Dominico Purcaro as a member and refused to accept his dues.

8. Plaintiff and also the said Dominico Purcaro, in all respects complied with the constitution, rules, and by-laws of membership of certificate of Loggia Oriente No. 1244. 20

Wherefore plaintiff demands damages in the sum of FOUR HUNDRED (\$400.00) DOLLARS, together with lawful interest and costs of suit.

FEDER & RINZLER,  
Attorneys of Plaintiff.

## REPLY.

## NEW JERSEY SUPREME COURT

## PASSAIC COUNTY

10	MARIA PURCARO, <div style="text-align: right;">Plaintiff,</div>	}	Action-at-Law.
	vs.		
	GRAND LODGE OF THE STATE OF NEW JERSEY, ORDER SONS OF ITALY IN AMERICA, a corpora- tion, <div style="text-align: right;">Defendant.</div>		

20 Plaintiff replying to the answer filed by the defendant in the above cause says that:

1. In respect to paragraph three of the answer, plaintiff denies the same and also alleges that the expulsion was illegal, wrong and without jurisdiction for the reasons specified in the complaint filed in this cause.

30 2. Plaintiff denies the allegations of paragraph four and by way of further answer repeats paragraph one of the reply.

40 3. Plaintiff denies the allegations of paragraph six and further alleges that for the reasons stated in the complaint filed in this cause, the failure and neglect of the defendant, Grand Lodge of the State of New Jersey, Order Sons of Italy in America, a corporation or Loggia Oriente, No. 1244 to list the deceased with respect to the Mortuary Fund in good standing, or otherwise, and

*Reply*

the failure and neglect to contain the deceased's name in the list as per Article 17 of the Laws, is no bar to plaintiff's action, and was illegal and wrongful, and the failure and neglect to so list the plaintiff was the result of the illegal, wrongful and unjustified expulsion of the deceased from membership as alleged in the complaint filed in the within cause and was wrongful. 10

4. Plaintiff denies the allegations of paragraph seven and says that the deceased was entitled to be recognized as having been a member in good standing of the Order and the Mortuary Fund for the reasons of the complaint filed in the within cause. 20

## AS TO FIRST SPECIAL DEFENSE

Plaintiff denies the allegations thereof and alleges that the expulsion of the deceased from the Order was without a hearing or trial, and without jurisdiction, was illegal, wrongful and void for the reasons alleged in the complaint and for the further reason that the deceased was not given any notice of any trial, or of any intention to try or expel the deceased, and for the reason that he was not expelled upon any ground of expulsion fixed by the by-laws or constitution, rules or regulations of the defendant and Loggia Oriente, No. 1244. 30

## AS TO SECOND SPECIAL DEFENSE

Plaintiff denies each and every allegation thereof and further alleges that: 40

*Reply*

The defendant and Loggia Oriente, No. 1244, did not provide any form or method of appeal, and if any appeal was provided the same was unreasonable and therefore void. Moreover, if any form or method of appeal is provided, same can  
10 only have application with respect to an action brought by a member, but the right of appeal or requirement of appeal has no application to someone other than a member and does not bar the plaintiff from maintaining this action. Moreover, inasmuch as the expulsion was without jurisdiction, without a hearing or notice, and upon a ground not recognized by the rules, charter and constitution of the defendant and Loggia Oriente,  
20 No. 1244, and inasmuch as the same was without jurisdiction, illegal and void, no appeal need be taken by a member or anyone else before maintaining an action.

## AS TO THIRD SPECIAL DEFENSE

Plaintiff denies the same and repeats his reply to the Second Special Defense and makes the same part hereof.

30

## AS TO FOURTH SPECIAL DEFENSE

Plaintiff denies the same and also alleges that even if it should be considered that the deceased was not a member of the defendant, he was nevertheless entitled to all the benefits of the defendant, and the plaintiff was entitled to his death benefit and interest in the Mortuary Fund by reason of the deceased's membership in the Loggia  
40 Oriente No. 1244, under the rules, by-laws and

*Answer*

regulations of the defendant and Loggia Oriente  
No. 1244.

## AS TO FIFTH SPECIAL DEFENSE

Plaintiff denies the allegations thereof.

10

FEDER & RINZLER,  
Attorneys of Plaintiff.

**ANSWER.**

## NEW JERSEY SUPREME COURT

PASSAIC COUNTY

20

MARIA PURCARO,	} Action at Law	} 30
Plaintiff,		
vs.		
GRAND LODGE OF THE STATE OF NEW JERSEY, ORDER SONS OF ITALY IN AMERICA, a corpora- tion,	} Defendant.	
Defendant.		

The defendant, a corporation of the State of  
New Jersey, with offices in the City of Newark,  
County of Essex and State of New Jersey, an-  
swering the amended complaint, says that:

1. It admits the first paragraph.
2. It admits the second paragraph only as to 4) that part in which it states that the deceased was

*Answer*

a member on November 4th, 1923, of Loggia Oriente, No. 1244.

10 3. It has no knowledge, information or belief to form an opinion as to the statements contained in paragraph 3, excepting from information received from the Loggia Oriente No. 1244 that the now deceased has been expelled from said Lodge.

4. It denies the 4th paragraph and states that in compliance with the general laws of the Order, the Lodge had jurisdiction under Articles 274-276-277 and 288 of said laws.

20 5. It admits the 5th paragraph only insofar as it states that no statement or list was sent to the defendant stating that the deceased was then a member in good standing with dues fully paid.

30 6. It admits the 6th paragraph, and further states that according to Article 24 of the mortuary fund of said Grand Lodge, in order to be entitled to the benefits it must appear that the member is listed with the mortuary fund, in good standing, with payment at the time of his death, and in good standing with the Lodge, and his name must be contained in the list sent by the Secretary of the Lodge as per Article 17 of the Laws.

40 7. It denies the seventh paragraph and insofar as this defendant is concerned, according to the defendant's by-laws as above stated, it could not recognize the deceased as having been a member in good standing of the Order and the Mortuary fund.

8. It denies the eighth paragraph.

*Answer*

## FIRST SPECIAL DEFENSE

Domenico Purcaro was not a member of the defendant association on the 23d day of February, 1928, and therefore not entitled to any benefits, he having been expelled from the Order by due trial and verdict of the judiciary committee of said Lodge on or about December 5th, 1927. 10

## SECOND SPECIAL DEFENSE

If Domenico Purcaro felt aggrieved at the verdict of the judiciary committee, according to Article 337 of the general laws, he should have appealed the verdict of said judiciary committee within fifteen days after the giving of said verdict, but he did not avail himself of said law, and did not produce an appeal against the decision of said judiciary committee. 20

## THIRD SPECIAL DEFENSE

The said Domenico Purcaro was notified to present himself before the judiciary committee according to Article 301 of the general laws, which he failed to do, and therefore the judiciary committee proceeded with the trial in the absence of the said Domenico Purcaro, as provided for in Article 330 of said general laws, found him guilty and expelled him from the Order. 30

## FOURTH SPECIAL DEFENSE

The Loggia Oriente No. 1244 is a subordinate lodge of the defendant corporation, and a member belonging to a subordinate lodge, is not a 40

*Answer*

member of the Grand Lodge, the only members of the Grand Lodge according to Article 7 of the general laws being the Grand Officers and the representatives of subordinate lodges called "Grand Delegates," elected by said subordinate lodges.

## FIFTH SPECIAL DEFENSE

In accordance with Article 25 of the mortuary fund, Domenico Purcaro, having been legally expelled from Loggia Oriente No. 1244, forfeited any right which he had to the benefit of the mortuary fund, including that of the refund of his assessment for registration or quotas.

Wherefore defendant demands judgment that the complaint and the amended complaint be dismissed with the costs and disbursements in this action.

T. MANCUSI-UNGARO,  
Attorney of Defendant.

60  
Feb. 1930

## New Jersey Court of Errors and Appeals

MARIA PURCARO,

Respondent,

vs.

GRAND LODGE OF THE STATE OF  
NEW JERSEY, ORDER SONS OF  
ITALY IN AMERICA, a corpora-  
tion,

Appellant.

Action at  
Law

On Appeal  
From Su-  
preme Court.

### APPELLANT'S BRIEF.

This case, was, by consent, submitted for decision, to the Judge without a jury, upon an agreed state of facts, printed on pages 6 to 12 of the Case.

The appeal is based upon the findings of the Court that the respondent's husband was, in his lifetime, a member in good standing of a branch lodge of the appellant organization; and that the proceedings which resulted in his expulsion from the local lodge, were void and illegal;

And it is further complained that the finding that there is no condition of membership prohibiting resort to a court of law in such a case as this by a member, or by one claiming under him (Grounds of Appeal, case, page 2).

## POINT I.

The plaintiff is not entitled to recover death benefit because at the time of decedent's death, on February 23rd, 1928, deceased was not a member of the Order.

The deceased was, up to December, 1927, a member of Loggia Oriente No. 1244 of Passaic, New Jersey, a Subordinate Lodge of the Order Sons of Italy, but not a member of the defendant association. The Grand Lodge of the State of New Jersey is composed of duly elected delegates from the several subordinate lodges of the state, and in order to be a member or the same, a person must be a delegate from the subordinate lodge and it is not contended in this case that the deceased was a Grand Delegate from Loggia Oriente No. 1244 Order Sons of Italy of Passaic, New Jersey. The Order Sons of Italy is a national organization consisting of a Supreme Lodge, which is the supreme authority of the Order and has jurisdiction over all the Grand Lodges in the United States and the Order in general composed of Supreme Delegates elected by each Grand Lodge in session; a Grand Lodge of a State, which has jurisdiction over the subordinate lodges in that particular State and is independent of the Supreme Lodge insofar as the finances and conduct of the Order in the State is concerned, and composed of Grand Delegates elected by the respective Subordinate Lodges and Subordinate Lodges, which are established in the several cities or towns of the state, and which said subordinate Lodges are practically independent from the Grand Lodge insofar as the internal affairs of the same are concerned or the financial matters are involved.

The Subordinate Lodges and their respective members, however, must abide by the Constitution and By-laws as emanated from the Supreme Lodge and the Grand Lodge must follow the same course.

The Mortuary Benefit Fund is a special fund established by the Grand Lodge in Session, conducted by a Special Committee, according to the rules and regulations made by the said Committee, under the supervision of the Grand Lodge of the particular state. This Committee has charge of the payment of death benefits to those who are entitled to receive the same, and has a right to refuse the payment, should a member belonging to the said Mortuary Benefit Fund be found to be not entitled to said benefit. From the decision of the Committee a member or his heirs must appeal to the Grand Council which has the final say in the matter (see Article 28 of the Rules of the Mortuary Fund Committee as stated in the Agreed State of Facts, case, page 9, paragraph 9).

In order to be entitled to the payment of the death benefit, Article 24, as stated in the Agreed State of Facts, must be complied with, and, before the Committee can pay the death benefit, the documents called for in Article 31 (paragraph 11, printed on page 10, of the Agreed State of Facts) must be furnished to the Committee. No such documents were ever furnished by the Lodge to the said Committee, for the reason that the Lodge had expelled the deceased on December 5th, 1927, and had so notified the Mortuary Fund Committee. The deceased did not appeal from such decree of expulsion to the higher tribunals of the Order, as he had a right to do, and there-

fore acquiesced in the action of the Lodge against him.

The law is well settled that: If the Constitution and by-laws provide a tribunal to hear and to determine grievances with or without a remedy by appeal to a higher tribunal of the society, such remedies must be exhausted by an aggrieved member before relief is asked of the civil courts.

The agreement to exhaust the remedy provided by the Lodge, enters into and becomes an inseparable part of the contractual relation and the member cannot enforce the contract on the part of his lodge without executing it on his own part.

The courts will not ordinarily interfere to relieve a member against a sentence of discipline, suspension or expulsion until the means of relief within the Order, including appeals, afforded by the rules of the society have been exhausted.

This is especially true where the laws of the society provide in terms that the remedies within the association must be exhausted, before a resort to the courts. **THE DECISION OF THE ORDER IN ADMITTING MEMBERS AND IN DISCIPLINING, SUSPENDING OR EXPELLING THEM ARE OF A QUASI-JUDICIAL NATURE WITH WHICH THE COURT WILL NOT ORDINARILY INTERFERE, ESPECIALLY WHERE THE QUESTION IS SOUGHT TO BE RAISED COLLATERALLY IN AN ACTION FOR THE RECOVERY OF BENEFITS.**

So the determination of societies as to the good standing of members therein are conclusive in courts of justice where they have proceeded to determine the question in accordance with the

rules of the Order. Ordinarily the courts will not interfere to compel the reinstatement of a member who has been expelled from the society. And in the case of *Emma v. Loggia Fasie Italici No. 16 Order Sons of Italy in America*, No. 85 October Term, 1928, the Supreme Court, *per curiam*, held as follows:

“One answer made and which we deem adequate, is that a remedy was provided for him by the rules of the order, which he should have exhausted before coming here; and that not only has he not exhausted that remedy, but has not even invoked it. Relator claims that this is a case in which he is not required to invoke the tribunals of the order, but may come here in the first instance.

“The rules applicable to this class of cases were formulated by former Justice Van Syckel of this court, in the case of *Roxbury Lodge v. Hocking*, 60 N. J. L. 439, at pp. 440, 441, and may be stated as follows:

“1. Where the question is a social one, involving discipline or the conduct or standing of a member, he must exhaust his remedy within the organization if such remedy is provided before invoking the aid of courts of law (see *Grant v. Ancient Order of Foresters*, 75 N. J. L. 109; *Zeliff v. Knights of Pythias*, 53 *Id.* 536).”

“2. But if the controversy involve property rights, then in the absence of regulations amounting to an express agreement to exhaust remedies within the order, the courts will intervene to protect such property rights. *Byrne v. Supreme Circle*, 74 N. J. L. 258, was a case in this class.”

“3. On the other hand, even if property rights are involved, still if the rules of the

organization provide a remedy within that body, and members have agreed to exhaust that remedy before application to the law courts, the latter will not interfere until that remedy has been exhausted (*Ocean Castle v. Smith*, 58 N. J. L. 545; affirmed *Smith v. Ocean Castle*, 59 *Id.* 198)."

"4. But in cases of property rights it should be clear that there are cognizable by the tribunals established within the order (*Roxbury Lodge v. Hocking*, *supra*)."

"In the present case, participation in a mortuary fund is involved, and that is a property right."

"We proceed, therefore, to examine the regulations of the order as laid before us, and find that section 368 provides in general terms: 'No officer or brother may institute proceedings before the civil courts of law without former proceedings being had before the Arbitral Boards.' A second paragraph goes on to say that failure to comply with this provision works automatic expulsion, but until respondents invoke that paragraph in resistance to an appeal within the order, we refrain from passing on its validity, particularly as it is neither defended nor attacked. Further examination of the regulations shows a complete scheme of procedure, original and appellate; so that the case appears to fall clearly within the rule of *Smith v. Ocean Castle*, *supra*."

The deceased not having appealed, in compliance with the law, and having deemed himself not a member of the Order, naturally lost any claim or right which he had either in the subordinate lodge or in the Mortuary Fund, and it

necessarily follows, that having no such right at the time of his death, no one, either as beneficiary or as heirs of the deceased, has a valid claim to such benefits.

#### POINT II.

The beneficiary is not entitled to the benefit, because, even if the deceased had been entitled to the same and she had been refused by the Committee, she did not exhaust the remedies provided for by the rules of the Committee.

The plaintiff in this cause was notified by the Committee that she was not entitled to benefits for the reasons above set forth. Article 28, as stated in the Agreed State of Facts gave the right to the plaintiff to appeal to the Grand Council, but no claim is made that such appeal was made, and according to the general rules of the Order, as above stated, the contractual relations between the lodge and the member extended also to the heirs and beneficiaries, and therefore Point I applies also to the plaintiff in this case, in her capacity as beneficiary.

Counsel for the respondent lays stress upon the fact that this action is not brought by a member, but by his beneficiary, citing *Strasser v. Soots*, 59 Hun 143, 13 N. Y. Supp. 167.

An analysis of that case shows the distinction between the by-laws governing the Order of Odd Fellows and the Sons of Italy, with regard to the right of beneficiaries to appear in the tribunals of the society and prosecute claims.

The plaintiff in that case is the assignee of the next of kin of Moses Strasser, on whose death the plaintiff claimed the funeral benefit, on the death of a member not disqualified by the rules of the lodge.

The following is the language of Justice Mayan:

“The contract provides that the funeral benefit ‘shall be paid without delay to the deceased brother’s next of kin’—when this contract matures it exists between the lodge and non-members. It would not be a reasonable construction of a contract between the lodge and a non-member to hold the the non-members’ rights under it are subject to the *adjudication of his adversary*. Its rules are binding upon its members, *for they have so agreed*; but, where the member makes a contract with the lodge for the benefit of third parties the contract must be enforced according to its terms, *and not according to the subsequent adjudication of the lodge as to the meaning of its terms*. The provision of the constitution that benefits ‘shall be dependent upon and recoverable only through the methods provided in the constitution’ must mean that benefits to members shall be, so recoverable, not benefits to which strangers by virtue of a contract made in their behalf with the lodge, are entitled.”

Justice Mayan says further:

“The contract or compact under and by virtue of which members can make claims against the order for benefits must be the constitution and by-laws. To these (he continues) members are deemed to have assented, and, so long as they are fairly and impartially executed, that a court of equity would not be authorized to inter-

vene to correct abuses the parties must and ought to be governed by the letter of the contract. This would clearly be so where a member of the order was seeking a benefit conferred by the constitution or by-laws of the lodge.”

He continues:

“Does the same rule apply when the claim is made by a person not a member of order, who can have no hearing in person before its body; or *access to its tribunals provided by it for adjustment of questions between its members?*”

He continues:

“The case shows that neither the plaintiff nor the next of kin of Moses Strasser, now are or ever have been members of this order. The remedies which the lodge and its superior tribunals have provided are, by the constitution and by-laws, *only open to the members of the society*. The plaintiff is not such a member and does not derive title from a member, *and cannot appear in the tribunals of the society and prosecute his claim*, except by favor. His right to the funeral benefit is a contract right; *and since he has no right to resort to the tribunals of the secret organization*, he has not in a legal sense, failed to exhaust his remedies.” (Italics ours.)

The Missouri case of *Elberbe app't v. Faust* (1894) reported in 25 L. R. A., page 149, seems to be the first in which a distinction has been considered between membership in a society or paternal order and the right to insurance connected therewith with respect to the effect of an expulsion from the order. It was held that:

“The termination of a membership in a Masonic lodge, which is in substance and

effect an expulsion, although not so in form, forfeits membership in a Masonic Mutual Benefit Association which not only provides that expulsion from the lodge shall work a forfeiture of membership in the association, but also makes it a requisite for membership that the applicant be a Mason in good standing.”

Says Justice Dixon, in *Smith v. Ocean Castle, No. 11, Knights of the Golden Eagle* (Court of Errors and Appeals of New Jersey), 59 N. J. L. 198:

“On this point we agree with the views expressed in the Supreme Court, holding that, before seeking redress in the courts of the state, the plaintiff was bound by the constitution of the order to which he belonged, to carry his complaints against the ‘Castle’ to the higher authorities of the society. A non-suit was therefore properly directed.”

*State (Ocean Castle, No. 11, Knights of the Golden Eagle, Prosecutor) v. Smith*, 58 N. J. L. 545 (Supreme Court). The opinion of the court was delivered by Justice Garrison:

“The constitution of the Supreme Castle of the United States incorporates in the constitution of each subordinate castle the following provisions (article 9, on appeals):

“1. All appeals from the action of the grand and subordinate castles, or by the members thereof to the Supreme Castle, shall be received and passed upon in its capacity of a court of last resort. Said appeals, in proper form, shall come up without any intervention or prevention of grand or subordinate castles; and, when presented for certification by their official seal, the same shall be done.”

“Sec. 2. Before a brother, his representative, counsel, or assignee, can seek redress in the case of appeal to the civil courts, he or they must exhaust the laws of the order by an appeal to the castle, grand castle, and supreme castle.”

“The appeals thus provided for are not limited to matters of discipline, as is shown by the word ‘assignee.’ They are in terms not meant to be finally conclusive, but are, if lawful, obligatory conditions precedent to the maintenance of a civil action.”

“The association is what is known as a ‘fraternal benevolent organization,’ whose constitution, upon familiar principles, becomes incorporated in all the contractual relations of the members *inter se*, and with the association. If the provision above cited from the constitution is a lawful regulation, it enters into the contract of each member as much as does the correlative duty of the castle to respond in sick benefits under prescribed conditions. The naked question, therefore, is whether the members of these associations may lawfully agree that they will not draw their affairs into the public courts until after the tribunals erected by themselves for that purpose shall have heard the dispute in the manner designated by the associated members.”

“The wisdom of such a provision is not up for argument; and, inasmuch as it cannot be said to be so unreasonable as to be invalid, the only question is as to the lawfulness of the regulation. This question does not appear to have two sides.”

“Whatever conflict of opinion there may be as to the legality of provisions that prohibit actions at law altogether, there ap-

appears to be no reasonable ground for denying that these organizations may provide methods for hearing the controversies of their own members, and that the members may bind themselves to have recourse thereto in the first instance, and before invoking the civil courts. The cases that deny most strenuously the public policy of permitting the establishment by these associations of tribunals of conclusive decision admit that there is no valid reason why their members may not lawfully agree not to sue at law until after the method of redress provided by themselves has first been invoked (*Bauer v. Sampson Lodge*, 102 Ind. 262, I. N. E. 571)."

"Other authorities place no limit upon the right of subscribers to waive their recourse to civil courts (*Independent Order v. Schmidt*, 57 Md. 98; *Society v. Vandyke*, 2 Whart. 309)."

"In our own state, the case of *Zeliff v. Grand Lodge*, 53 N. J. Law, 536, 22 Atl. 63, concerns cases of discipline only; but the distinction therein suggested is of force only when conclusive effect is sought to be given to the special tribunal in cases involving property rights."

"We think the reasonable rule is that members of these associations may agree to submit their grievances in the first instance to an internal tribunal of their own; and that, having so agreed, they may be held to it, and cannot, against the protest of the association, maintain a civil action against it, until the condition precedent has been, in legal contemplation, complied with."

Says Justice Haskell for the Supreme Judicial Court of Maine, in the case of *Jeane v. Grand*

*Lodge, Ancient Order United Workmen*, 86 Maine 434:

“The plaintiff must recover, if at all, upon the ground that her husband died while a member of defendant corporation, in good standing. Before his death he had been expelled from membership. It is said that the proceedings leading to his expulsion were irregular, and did not conform to the rules of the order. Suppose they were. The laws of the order give an appeal to a supreme tribunal, constituted for the very purpose of correcting such errors, and they provide that each member failing to take such appeal ‘shall be deemed to have thereby agreed to abide by such decision or enforcement of the laws or rules of the order.’ ”

And the learned court further says:

“The deceased failed to take any appeal from his expulsion, and thereby must be held to have acquiesced in the decision. If courts of law should undertake to review the regularity of procedure in all secret or private societies or associations, the burden would become onerous. Moreover, it is just and reasonable to hold that when a member of such society has a remedy, under the rules of his order, from any supposed erroneous action injurious to himself, he should first exhaust that remedy, before appealing to the courts for relief.”

Mr. Justice Elkin, in *Beeman v. Supreme Lodge, Shield of Honor*, 215 Pa. 627, Supreme Court of Pennsylvania, says:

“The Superior Court, in reversing the judgment of the Common Pleas, held that, as *Beeman* did not follow the method

pointed out by the by-laws to secure his reinstatement in the lodge, and as the beneficiary likewise did not adopt such method upon the refusal of the lodge to pay the death benefits, the present action cannot be maintained. The ruling in this respect is based upon sections 165 and 398 of the by-laws of the defendant society. We do not see how there can be any escape from this position."

The learned Justice continues in *Beeman v. Supreme Lodge, Shield of Honor*, for Supreme Court of Pennsylvania, 215 Pa. 627; Atlantic Reporter 64, 792, as follows:

"The by-law in question does not deprive the beneficiary of her right to enforce her claim in a court of law, but provides that, before any suit at law or in equity shall be instituted, the remedies provided by the society shall first be exhausted. This is a reasonable regulation for the settlement of disputes arising in the society, and under the cases above cited is binding upon the members."

**THE CONDITION OF MEMBERSHIP PROHIBITS RESORT TO A COURT OF LAW IN SUCH A CASE AS THIS BY A MEMBER, OR BY ONE CLAIMING UNDER HIM.**

And where one of the conditions in a certificate entitling the member to an endowment was that he should be in good standing at the time of his death, no recovery could be had on the certificate of a member who had been suspended by his local lodge for unbecoming conduct, where due notice of the proceedings had been given him by the proper officer as prescribed by the code of the order, and he had taken no appeal from the

decision of the lodge, and no assessment had been made against him, or dues paid by him, subsequent to his suspension. (*Supreme Lodge K. P. v. Wilson* (1895) 14 C. C. A. 264, 30 U. S. App. 234, 66 Fed. 785.)

In *Berkhout v. Supreme Council Royal Arcanum*, 62 N. J. L. 103, Supreme Court, opinion by Justice Gummere, the syllabus by the court, held that:

“A by-law which provides for the expulsion of a member, without affording him an opportunity of defending himself against the charges upon which his expulsion is based, is not altogether null and void, but only so to the extent that it deprives such member of a hearing from which he might possibly derive a benefit; and, where it conclusively appears that no such result has followed its enforcement, the existence of such a provision in it will not be held to invalidate the proceedings taken under it.”

February Term, 1930.

Respectfully submitted,

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The Otsego Press, Cooperstown, N. Y.

*Filed after the Oral Argument  
by leave of Court.*

## New Jersey Court of Errors and Appeals

MARIA PURCARO, Plaintiff-Respondent,  vs.  GRAND LODGE OF THE STATE OF NEW JERSEY, ORDER SONS OF ITALY IN AMERICA, a corpora- tion,  Defendant-Appellant.	}	Action at Law. On Defendant's Appeal from Judgment of Supreme Court.
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### SUPPLEMENTAL BRIEF FOR RESPONDENT.

#### Statement.

On the oral argument of this cause, on February 7th, 1930, this court allowed respondent to file a supplemental brief.

#### Supplement to Point I.

The conviction of the deceased, and his consequent expulsion from the Order, is nugatory, because it is contrary to the general principle of law that a member of a society cannot be expelled for the alleged violation of a *by-law* upon a *complaint which* does not charge *any* violation of such *by-law*, but *solely alleges matter which is not within the meaning of such by-law.*

This was recognized by this court in *Supreme Lodge of Knights of Pythias of the World vs. Eskholme*, 59 N. J. Law 255, where it was said:

“And it was also held, in that case (referring to the case of *Vivar vs. Knights of Pythias*, 52 N. J. Law 455, referred to in the opinion) that ‘an attempt at expulsion, without conviction had in accordance with the rules of the society, or *under the general principles of law, is nugatory. The membership of the individual continues.*’”

The charge laid in the complaint against the member is “*has called the members of Loggia Oriente, (a local branch of the Order) a bunch of thieves in public*”. The by-law, which the Grand Lodge claims was violated, reads: “*abuses the Order (the Grand Lodge) publicly by word of mouth or through the press*”.

The words charged in the complaint were addressed to *members* of the local *branch*: they did not relate to the *Order (the Grand Lodge)*. The question arises, what is meant by the language of the by-law, which reads: “*abuses the Order publicly by word of mouth or through the press*”. We think that it is fair to construe this language to mean the making of derogatory or false statements with regard to the *Order—the Grand Lodge*, such as, for example, to falsely say that the Grand Lodge is unlawfully diverting its funds for purposes not recognized by the Constitution or by-laws; or it may refer to a case where a member feigns illness for the purpose of obtaining sick benefits to which he is not entitled, or makes a false affidavit to obtain benefits to which he is not justly entitled.

But to conclude that where one person says to other people, who happen to be *members* of the same *branch* society of which the person speaking is a member, that *they, the members* are a bunch of thieves, the speaker thereby “*abuses the Order—the Grand Lodge*, is, indeed, to unfairly strain the

This court said in Hampton v. Hartford Fire Ins. Co., 65 N. J. Law, 265: "The court will never seek for a construction of a forfeiture clause in a policy but will sustain it, if one which will defeat it is reasonably deducible from the terms or words used to express it. Same effect is Henn v. Metropolitan Life Ins. Co., 67 N. J. Law, 310; Demick vs. Metropolitan Life Ins. Co., 69 N. J. Law, 384; cited with approval by this Court in Johnson v. Grand Lodge, etc. 81 N. J. Law, 511."

In Mulroy v. Supreme Lodge K. H., 28 Mo. A. 43,

it was held:

"A constitutional provision that a member may be expelled for 'immoral conduct', or for making to the 'lodge', or to its dictator, any accusation against a member which shall prove to be false and malicious', does not authorize expulsion for uttering false and malicious accusations are not made to the lodge or to its dictator."

In Com. v. St. Patrick Benev. Soc., 2 Binn. (Pa.)

441,449, Am. D. 453,

"An unincorporated association had a by-law which made it an offense subject to expulsion for one member to 'vilify' another. The court reinstated a member who had been expelled for violating this by-law, on the ground that such a law was not necessary for the good government and support of the corporation, saying: 'The right of membership is valuable, and not to be taken away without an authority fairly derived either from the charter or the nature of corporate bodies. The offense vilifying a member, is totally unconnected with the affairs of the society, and. . . taking cognizance of such offenses, will have the pernicious effect of introducing private feuds into the bosom of the society and interrupting the transactions of business.'"

This court will...  
The court will...  
The court will...  
The court will...  
The court will...  
The court will...  
The court will...  
The court will...  
The court will...  
The court will...

In Julio v. Sabena Locke & Co., 38 No. 1, 45  
it was held:

"A constitutional provision that a  
number may be exercised for financial gain  
and... or make in the... of  
to the... any... against  
a number which shall... to be...  
and... does not...  
and... and...  
to the...  
In Law v. ..., 38 No. 1, 45

"An unincorporated association...  
... which made it an...  
... for one...  
... The court...  
... of...  
... that...  
... for the...  
... the...  
... is...  
... an...  
... the...  
... The...  
... and...  
... will...  
... into the  
... the  
... of business."

meaning of the by-law. And it may be that the members who were called a bunch of thieves may be such. The record does not show that this statement was unfounded.

In *Bacon on Life and Accident Insurance* (Fourth edition), vol. 1, sec. 127, at page 213, it is said:

*“Charges must be Sufficient”*—*“The charges must not be trivial in their nature or trifling. They must be definite and clear.*  
(our italics)

If, therefore, it is not clear from the language of the by-law, what meaning was intended, or if any doubt or ambiguity exists, then such construction should be adopted by the court as will favor the plaintiff in order to avert a forfeiture of membership, because the law abhors forfeitures.

See 19 Ruling Case Law, section 16, under the head “Mutual Benefit Societies”; and the other authorities cited on pages 7 and 8 of respondent’s original brief.

The following accusations have been held to be insufficient to justify expulsion or suspension: “Slander against the society” *Rochler vs. Mechanics’ Aid Soc.*, 22 Mich. 86; “talking against the society” *Radice vs. Italian, etc. Soc.*, 67 N. J. L. 196, 50 Atl. 691; “Villifying a member” *Commonwealth vs. St. Patrick’s Soc.*, 2 Binn. 441; 4 Am. Dec. 453; *Mulroy vs. Knights of Honor*, 28 Mo. App. 463; “doing business at less than the established tariff of the society” *People vs. Med. Soc.*, 24 Bach. 570; “unprofessional conduct in advertising” *People vs. Med. Soc. etc.*, 32 N. Y. 187; “disrespectful and contemptuous language to associates” *Fuller vs. Plainfield Academy*, 6 Conv. 532; “stating that the lodge would not pay and never intended to pay” *Erd vs. Bavarrion etc. Ass’n.*, 67

Mich. 233; 34 N. W. 555; "offense against law" Beneficial Ass'n, 38 Pa. St. 298; "ungentlemanly conduct" (which consisted of a member of a medical society becoming surety on the bonds of colored citizens charged with disorderly conduct and riot) State vs. Georgia Medical Soc., 38 Ga. 608.

Appellant does *not* seek to justify the expulsion of the deceased from membership, upon the theory that the language which he used towards members of the branch society, constitutes ground for expulsion under the common law, but that that language constitutes a violation of the *by-law*. This distinction is important because even if it should be assumed (although it is denied) that the complaint charges a common law cause for expulsion, the fact exists that the Grand Lodge promulgated certain by-laws, specifically limiting and fixing the *only* grounds for expulsion, and therefore the expulsion is nugatory unless it is supported by a complaint which alleges facts constituting a violation of the particular by-law under consideration, which it is claimed was violated. And the complaint does not charge any facts showing a violation of such by-law.

And even by common law the complaint made against the deceased is no ground for expulsion.

In *Allnut vs. High Court of Foresters*, 61 Mich. 110, 28 N. W. 802, it was held that defamation by a member of the character of another member is, by common law, no cause for discipline.

In *Pepin vs. Society St. John, etc.*, 24 R. I. 1: 54 Atl. 47; 60 L. R. A. 620; *Plattdeutsche etc. vs. Ross*, 117 Ill. App. 247, it was held that if the charges are insufficient the suspension is a nullity and can be collaterally attacked. (Cited in *Bacon on Life and Accident Insurance*, Vol. 1, sec. 127, at page 215).

In *People vs. Women's Catholic Order of Foresters*, 162 Ill. 78, 44 N. E. 401, it was held that *an expulsion made by a subordinate lodge when it has no jurisdiction for want of notice to the member expelled or for want of authority to entertain the charges brought against him is void.*

And the expulsion relieved the member from the payment of dues.

In *Langnecker vs. Trustees of Grand Lodge Ancient Order of United Workmen of Wisconsin* (Wis.) 55 L. R. A. 185, it was held that after receiving notice of his expulsion from the society and that no more money will be received from him, a member is not obliged to tender any dues, upon the ground that he is justified in believing that no tender would be accepted, and the formality is, therefore, unnecessary.

To the same effect is *Guetzkow vs. Michigan Mut. L. Ins. Co.*, 102 Wis. 448, 81 N. W. 652.

See also the authorities cited on pages 5 to 9 of respondent's original brief.

### Supplement to Point II.

In *Brown vs. Supreme Court I. O. F.*, 34 Misc. (N. Y.) 556, 70 N. Y. Supp. 379 (affirmed in 66 N. Y. App. Div. 259, 72 N. Y. Supp. 806) it was held that where the constitution provides that no member shall proceed in the courts against the supreme court of the order until he has exhausted all remedies given by the constitution of the order, it does not apply where the question at issue is strictly one of law, and capable of final decision by courts of law.

Whether calling other persons "a bunch of thieves" is a violation of a by-law which reads "abuses the Order publicly by word of mouth or

through the press", raises a question which is strictly one of law, and capable of final decision by courts of law, and therefore, on *that* ground, the by-law, which requires a member to appeal within the tribunals of the Order, before resorting to civil courts, would not apply in the case at bar.

The following authorities establish that doctrine in addition to the authorities already cited on our original brief.

In *Langnecker vs. Trustees of Grand Lodge Ancient Order of United Workmen of Wisconsin*, supra, the court said:

"No reason is perceived why the rules does not apply, as contended by respondent's counsel, that *an appeal from an inferior to a superior tribunal to avoid the effect of an absolutely void proceeding is unnecessary. So far as we have been able to discover, the courts that have passed upon the question have so held.* Citing *Gardon v. Supreme Lodge K. of P.*, 50 Mo. App. 45; *Mulroy v. Supreme Lodge K. of H.*, 28 Mo. App. 463; *Hall v. Supreme Lodge K. of H.*, 24 Fed. 450. *The text writers state the law likewise. Citing Niblock, Ben. Soc. p. 101. The principle seems so elementary that we are not required to resort to authority to support it.*" (italics ours)

To the same effect are *Modern Woodmen of America vs. Deters*, 65 Ill. App. 368; *Slater vs. Supreme Lodge K. of H.*, 26 Mo. App. 387; *Swanie vs. Miller*, 72 Mo. App. 446; *Gardon vs. Supreme Lodge K. of P.*, 50 Mo. App. 45; *Hoeffner vs. Grove Lodge G. O. H. M.*, 41 Mo. App. 359.

In *Hall vs. Supreme Lodge K. H.*, 24 Fed. 450, it was held, that where the suspension of a subordinate lodge is absolutely void, no appeal from such order is necessary to authorize a resort to the courts.

Provisions relating to procedure for settlement in the society, in cases of disputes between "members" and the society, have been held not to affect the right of a "beneficiary" to sue without first exhausting the remedies within the society.

Krunle vs. Grand Lodge A. O. W. W., 110 Cal. 204, 42 Pac. 634; Wells vs. McComas Council Mo. 14 J. O. U. A. M. vs. Littleton, 100 Md. 416, 60 Atl. 22, Burlington Voluntary Relief Dept. vs. White, 41 Nebr. 547, 59 N. W. 747, 43 Am. St. Rep. 701, 41 Neb. 561, 59 N. W. 751; Dobson vs. Hall, 11 Pa. Co. Ct. 532.

See also Supreme Lodge O. M. P. Zerulla, 99 Ill. App. 630; and Maxwell vs. Family Protective Union, 115 Ga. 475; 41 S. E. 552; Burlington, etc. vs. White, 41 Neb. 547; 59 N. W. 747.

In addition, the by-law now under consideration makes an appeal within the tribunal of the Order only *permissive*, but *not* mandatory; and, therefore, a party *may* appeal within the tribunal of the Order, but he need not.

On that topic, in the text by Bacon, *supra*, at page 547, it is said that where the provision for an appeal is only permissive, the member need not pursue the remedy further. Citing Supreme Lodge vs. Dey, 58 Kan. 283, 49 Pac. 74.

At most, a reading of the by-law in question creates an ambiguity, and, therefore, since the by-law was prepared by the appellant, any doubt with respect to its meaning should be construed against the appellant and in favor of the respondent, to prevent a forfeiture.

The first sentence of the by-law says that a *member*, or *his heirs*, can appeal; and the second sentence of the same paragraph reads: "They (*a member or his heirs*) must first submit to the tribunals of the Order before proceeding in the Civil Courts". The ambiguity is patent.

In any event, however, it is clear from the language of the by-law itself, that the Grand Lodge never intended to require a *beneficiary* to resort to the tribunals of the Grand Lodge before proceeding to the Civil Courts, because, in each instance, when the by-law speaks of an appeal, within the tribunals of the Order, or resort thereto, it specifically refers to a *member*, or his *heirs*—but *not to beneficiary*.

In the first sentence of the first paragraph, the by-law reads, "A member or his heirs". In the second sentence of the same paragraph, it reads, "They (meaning a member or his heirs)". In the second paragraph of the same by-law, the word "heirs" is used, and the word "members" is used. The term beneficiary is nowhere used in the by-law.

**Respondent respectfully submits that the judgment should be affirmed.**

Respectfully submitted,

FEDER & RINZLER,  
Attorneys of Plaintiff-Respondent.

*and of Counsel*

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Feb. 1930

## New Jersey Court of Errors and Appeals

<p style="text-align: center;">MARIA PURCARO, Plaintiff-Respondent,</p> <p style="text-align: center;">vs.</p> <p>GRAND LODGE OF THE STATE OF NEW JERSEY, ORDER SONS OF ITALY IN AMERICA, a corpor- ation,</p> <p style="text-align: center;">Defendant-Appellant.</p>	}	<p>Action at Law</p> <p>On Defendant's appeal from judgment of Supreme Court.</p>
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### BRIEF FOR RESPONDENT.

This case was tried and decided by Circuit Judge Porter, without a jury, by consent, upon an agreed state of facts (pp. 6-15).

The action was brought by the widow of a member of the Order to recover the amount of a death benefit which, by the terms of the by-laws, the Order became obligated to pay to the member's wife upon his death.

The defense was that the Order is not liable because it contended that (1) the member had been expelled from its ranks previous to his death, and (2) the plaintiff did not appeal to the tribunals of the Order before bringing suit.

The trial judge gave judgment for the plaintiff for the amount of the death benefit and interest, which in all amounts to \$536, and from that judgment defendant appeals.

## POINT I.

**The expulsion of the decedent by the Order was wrongful, illegal and without jurisdiction, and, therefore, the expulsion is a nullity, and is no bar to recovery by the Plaintiff.**

Here, respondent will deal with appellant's Point I which is: that the plaintiff is not entitled to recover because at the time of decedent's death he was not a member of the Order, having been previously expelled.

In order to determine the merit of the contention made under this head, we must turn to the ground for expulsion relied upon by the defendant. This is set out in Article 343, Sub-division G of the General Laws of the Order, which are stated in full in Clause 6 of the agreed state of facts (Case, p. 7, ll. 28-40). The particular ground for expulsion reads as follows: "Abuses the *Order* publicly by word of mouth or through the press." The question at once arises, whether the complaint which was made against the deceased alleges a violation of *that* ground (or any ground) for expulsion. The complaint is set out in full under the head "Schedule A", of the stipulated facts (Case, p. 13). An examination of the complaint shows that it does not charge the decedent with committing *that* ground of expulsion. (It does not charge any ground of expulsion). On the contrary, the only allegation of the complaint is a charge that the decedent, at a meeting of the Lodge "has called the *members of Loggia Oriente*, a bunch of thieves in public".

It is highly important to observe that the complaint does not charge that the decedent "abuses

(or abused) the *Order* publicly by word of mouth or through the press." The Order is "Grand Lodge of the State of New Jersey, Order Sons of Italy in America"—the defendant in this case. Loggia Oriente is the local Lodge, which was a *branch* of the Grand Lodge. The deceased did not abuse the *Order* by calling "the members of Loggia Oriente, a bunch of thieves in public". The result is, the deceased was charged, found guilty, and then expelled for a cause which was not recognized as a ground for expulsion by Sub-division G, Article 343, of the General Laws of the Order.

Schedule "C" (Case, p. 14) of the agreed state of facts proves our contention, for in clause 2 thereof it recites "That the accused is guilty of the charges mentioned and specified in the said notice (refers to Schedule "B") received by him"; and clause 3, which reads: "That the language used by the said accused is in violation of Article 343, paragraph G of the by-laws".

Having expelled the deceased for a cause not recognized as a ground for expulsion, and having expelled him for violating paragraph 6 of Article 343, of the By-Laws on a complaint and evidence which did not charge or prove a violation of *that* (or any) by-law, namely, having failed to charge by complaint and prove by evidence that the deceased abused the Order publicly by word of mouth or through the press, it necessarily follows that the expulsion was wrongful, illegal, and without jurisdiction. Such expulsion is, therefore, no expulsion.

In *Supreme Lodge of Knights of Pythias of the World vs. Eskholme*, 59 N. J. Law 255, the syllabus by our Court of Errors and Appeals reads:

"1. To render the judgment of a benefit lodge concerning property rights valid, jurisdiction must appear, by evidence of compli-

ance with the modes of procedure relating to notice to parties and in other particulars.

“2. Irregularities of procedure in the course of the inquiry in such a case, which are contrary to general principles of law, may invalidate the conclusions reached.”

In addition to other property rights that one necessarily has by virtue of membership in a sick and death benefit society, he has the right to attend meetings, conventions, use the society rooms, property, paraphernalia, etc., and the further property right of receiving benefits when the occasion arises.

The fact that the deceased was tried and convicted of violating a by-law, and accordingly expelled upon a complaint and testimony which did not charge or prove a violation of the by-law, Subdivision G, article 343, of the General Laws of the Order, is a more serious objection than a mere irregularity of procedure.

In view of the decision above cited, the judgment of the society in expelling the deceased is a nullity and does not bar the plaintiff's recovery.

In *Venezia vs. Italian Mut. Benev. Society of Perth Amboy*, 74 N. J. Law 433, the syllabus by our Supreme Court reads:

“A member of a benevolent association, against whom proceedings are pending which have his expulsion for their object, is entitled to make such defense as he may have to the charges upon which the proceedings are based, and, if he is expelled without being afforded an opportunity to submit his defense, he is deprived of a substantial right which the ordinary principles of justice require that he should be permitted to enjoy.”

The courts have gone so far as to hold that the effect of a void or wrongful expulsion is to absolve a member from further paying dues or assessments.

19 Ruling Case Law 1275, citing *O'Neil vs. Supreme Council American Legion of Honor*, 70 N. J. Law 410, 1 Ann. Cas. 422,, and other cases cited.

The fourth syllabus by our Supreme Court in *that* case reads:

“Where such a benefit certificate is repudiated during the life of the member, he need not continue payment of assessments, or otherwise preserve his good standing in the organization, in order to entitle himself to sue for damages. Repudiation absolves the injured party from further performance of conditions precedent on his part.”

In *Parker vs. Petit*, 43 N. J. Law, 512, cited in *O'Neil vs. Supreme Council, American Legion of Honor*, *supra*, the Supreme Court held:

“As already remarked, repudiation absolves the injured party from further performance of conditions precedent.”

A case analogous to the case at bar is *State ex rel. Radice vs. Italian-American Christopher Columbus Soc.*, 67 N. J. Law 196, 50 Atl. 691, decided by our Supreme Court, where it was held:

“The constitution of a mutual benefit association prescribed the penalty of expulsion against members who shall have impugned the honor or the name of the society, either in word or deed, or who shall have talked against the society, then staining the good name and honor of the same. Two of the members had been appointed upon a committee to defend certain suits against the

society in the civil courts. The suits were decided against the society. A motion to expel the two members on account of the loss of two suits against the society, and in the case of M., one of the two members, on account of his disorderly manner in pressing a motion for sick benefits for his brother, and his refusal to cease talking when ordered to do so, prevailed. Held, on review, that the charges gave no jurisdiction for the expulsion, and that the members so expelled should be reinstated."

(Syllabus by the court.)

Of similar importance is the decision of *DeHart vs. Hook & Ladder Co.*, 61 N. J. Law 507, cited with approval in the case of *State, ex rel. Radice vs. Italian-American etc.*, supra.

The rule as stated in 25 Ruling Case Law, Section 12, at page 55, as follows:

"No member can be expelled, and thus deprived of his share of the property of the association, *unless for the violation of some provision of the law of the association creating the offense charged, and prescribing expulsion as the penalty*, or for such conduct as clearly violates the fundamental objects of the association, and if persisted in and allowed would thwart those objects or bring the association into disrepute." (Citing cases).

In the case at bar, the defendant expelled the decedent upon the alleged ground that he violated a by-law, and not upon the ground that his "conduct violated the fundamental objects of the association, which, if persisted in and allowed would thwart those objects or bring the association into disrepute."

No by-law was violated.

In 19 Ruling Case Law, Section 54, at page 1247, the author said:

“As the power of benevolent and beneficial associations to expel members is not derived from the state, but rests upon the *agreement* of the members themselves, reference must be had to their charter or articles of association and their constitution and by-laws in order to determine the *right of expulsion* in a particular case.”

If the defendant had intended to make the calling of “the members of *Loggia Oriente* a branch society—a bunch of thieves in public” a ground for expulsion, it could and should have promulgated a by-law to effectuate that object; but it did not do so. The use of that language, therefore, addressed to *members* of the local branch does *not* constitute the right of expulsion. Moreover, forfeitures are abhorred, and wherever reasonably possible, the courts will try to prevent a forfeiture by construing the by-laws strictly against a forfeiture.

With respect to the construction of the by-laws: If there is any doubt or ambiguity in any of the language employed in the by-law, such doubt or ambiguity should be resolved against the defendant who prepared them. They should be construed against the society and in favor of the plaintiff.

Under the head “Mutual Benefit Societies”, in 19 Ruling Case Law, Section 16, dealing with the construction of by-laws, we find:

“Where two equally reasonable interpretations are possible that one should be adopted which will enable the beneficiary to recover, and if of doubtful construction, a by-law should not be interpreted in aid of an attempt to work a forfeiture. (Citing cases). Similarly a by-law providing for a forfeiture of the right to share in the benefits of

*the association will be construed most strongly against the latter."*

This is in accord with the general rule of the construction of contracts.

"Therefore, a construction of a contract which would lead to a forfeiture will not be favored." *Willison on Contracts*, Vol. 2, sec. 620, at page 1203.

And in section 621, Vol. 2, Professor Williston said:

"Since one who speaks or writes, can by exactness of expression more easily prevent mistakes in meaning, than one with whom he is dealing, doubts arising from ambiguity of language are resolved in favor of the latter; and as he will ordinarily be the promisee of the promise in question, it is sometimes stated that the contract, if ambiguous, will be construed in favor of the promisee."

A like rule is adopted in this state. Among the many cases dealing with the subject are these: *American Lithographing Co. vs. Commercial Cas. Ins. Co.*, 81 N. J. Law 271, where it was held that the words are to be used most strongly against the party using them. (Citing many cases).

And *Fletcher vs. Interstate Chemical Co.*, 94 N. J. Law 332, where the rule is stated in the syllabus by the court as follows:

"Where a contract is ambiguous, it will be construed most strongly against the party preparing it or employing the words concerning which doubt arises."

The result is, the expulsion is a nullity and consequently the decedent's status as a member, continued as if there had been no effort to expel.

*Supreme Court etc. v. Estabrooke*  
59 N. J. L. 255, (Cen. and App.)

Under Point I of this brief, counsel for Appellant argues with respect to the failure of the plaintiff to pursue a remedy provided by the by-laws of the Order before resorting to a civil action, and in connection therewith refers to the case of *Emma vs. Loggia Fasie Italici*, 7 N. J. Misc. 387. Inasmuch as appellant discusses the same subject under Point II of its brief we shall defer our comment regarding that topic until Point II of our brief.

## POINT II.

### **Failure of the Plaintiff to appeal to the tribunal of the Order before bringing suit is no bar to recovery.**

In dealing with the by-law of a similar organization, which, by its terms, provided that a party should first resort by appeal to the tribunal of the society before resorting to the courts, our Court of Errors and Appeals held in *Supreme Lodge of Knights of Pythias of the World vs. Eskholme, et als*, supra, 59 N. J. 255:

“Want of jurisdiction will obviate the necessity of appeal, under rules otherwise applicable.”

(Syllabus by the court).

In the body of the opinion this court in that case held:

“And it was held in that case (*Vivar v. Knights of Pithias*, 52 N. J. Law, 455) that “an attempt at expulsion, without conviction had in accordance with the rules of the society or under the general principles of law, is nugatory. The membership of the indi-

vidual continues. In this case it will be seen that jurisdiction was not acquired by proper notice of the appointment of a committee of trial, and that the proceedings were in other respects irregular, and not such as to justify or sustain a judgment. The want of jurisdiction does away with the obligation to seek relief by appeal, even when required by the constitution of a lodge in otherwise proper cases. 'The obligation to appeal is not imposed when the judgment is void for want of jurisdiction. \* \* \* The duty of an expelled member to exhaust, by appeal or otherwise, all the remedies within the organization, arises only where the association is acting strictly within the scope of its powers.' Bacon, Ben. Soc. Sec. 107."

*Emma vs. Loggia Fasie Italici*, 7 N. J. Misc. 387, decided by the Supreme Court, cited in Appellant's brief (p. 5) is of no consequence in the case at bar, because: (1) in that case, the expulsion was not illegal and wrongful and without jurisdiction, as is the fact in the case now before this court, and (2) that case ignores the decision of the Court of Errors and Appeals in Supreme Lodge of Knights of Pythias of the World v. Eskholme, *supra*, whose decision is conclusive and controlling upon the Supreme Court. The decision by the Court of last resort is not referred to in the cited case and probably escaped notice by the Supreme Court.

*Smith vs. Ocean Castle*, 59 N. J. Law 198, aff'g 58 N. J. L. 545, cited on page 10 of Appellant's brief, is not in appoint because in *that* case the society's action was regular and in accordance with its by-laws and also in accordance with the general principles of law "regulating such matters. In that respect, unlike Supreme Lodge of Knights of Pythias of the World vs. Eskholme, and unlike the case at bar.

*Berkhout vs. Supreme Council, Royal Arcanum*, 62 N. J. Law, 103, cited on p. 15 of Appellant's brief, has no application, because in that case, as the court points out in its opinion:

"Berkhout, by his own act, in confessing in open court the crime for which he had been indicted, thereby bringing about his imprisonment in state's prison made it impossible that he should attend before the meeting either of the council or of its inquiry committee, even if notice had been given to him; and, even if he had been heard, the final result would necessarily have been the same. The ground of expulsion declared by the by-law was conviction of crime and sentence thereon, except in those cases in which proceedings for the reversal of such sentence should be pending and undecided. In order, therefore, to have prevented the determination reached by the council and its committee, it would have been necessary for Berkhout to have proved either the falsity of the record of conviction or that he was not the defendant named therein, or that proceedings for the reversal of his sentence were pending and undecided. That he could have done none of these things is apparent. The agreed state of the case conclusively shows that the determination of the council and its committee, on the question of his expulsion, was entirely justified by the facts, and could not have been successfully resisted by him."

As already demonstrated under the first point of this brief, the entire proceedings for expulsion and the expulsion itself was wrongful, illegal and without jurisdiction, due to the fact that the expulsion was for a cause not provided as a ground for expulsion by the by-laws or constitution of the organization. This brings this case within the case ~~just cited~~ <sup>cited</sup>

*Osloholme, 59 N. J. L. 255*

In 19 Ruling Case Law, 1228, under the head "Mutual Benefit Societies", the author said:

"However, provisions as to appeals within the association must be strictly construed against the association, and liberally in favor of claimants."

Moreover, it is important to observe that this is not an action brought by a *member*, but by his beneficiary. In dealing with a similar situation a New York court, in *Straaser vs. Sloods*, 59 Hun, 143, 13 N. Y. Supp. 167, held that the rules of a benefit association forbidding resort to civil courts for the recovery of a benefit from the association until all the remedies within the association have been invoked and exhausted do *not* apply to a beneficiary who is not a member.

The by-law invoked by the defendant is set out in the agreed state of facts in clause 9 on page 3. It reads:

"A *member*, or *his heirs*, to whom a committee should refuse to pay the death benefits for reasons contemplated by these by-laws, can appeal to the Grand Council of the State. They (*a member or his heirs*) must first submit to the tribunals of the Order before proceeding in the Civil Courts.

"The Grand Council shall decide all controversies between the committee and the heirs entitled to the death benefit."

That by-law, no doubt, relates to a case where an action is brought by a *member* for sick benefits, for example, or by his *legal representative* who in the event of his death, would by law be entitled to the death benefit, namely, his next of kin, *in a case where no beneficiary was appointed*. In the case at bar, the plaintiff was appointed by the deceased as his beneficiary. In any event, the by-laws of

the society can only regulate the conduct of its *members*. *Straaser vs. Sloots*, supra, the case dealing with this point is of great importance because it is the only case that we have been able to find on the subject.

In *Smith vs. Robinson*, 83 N. J. Eq. 384, 90 Ati. 1063, Chancellor Walker held:

“Where personalty is bequeathed to heirs, the word ‘heirs’ means next of kin, in the absence of a clear intention to the contrary.” Citing *Trenton Trust & Safe Deposit Co. vs. Donnelly*, 65 N. J. Eq. 119, 124.

In the case at bar, the next of kin are not entitled to the benefit because the deceased had appointed the plaintiff as his beneficiary.

It is clear, therefore, that the plaintiff is not obliged to appeal to the society for two reasons, because (1) want of jurisdiction in expelling the deceased obviates the necessity of appeal, and (2) the action is not brought by the member, but by his beneficiary.

### CONCLUSION.

**For the foregoing reasons, we respectfully submit that the judgment of the Supreme Court should be affirmed.**

Respectfully submitted,

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Attorneys of Plaintiff-Respondent.

FEDER & RINZLER,  
Of Counsel.

