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Legal Episodes in the History

of

Freemasonry,

BY

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Legal Episodes in the History of Freemasonry.



ERY seldom have the Law Courts of the United Kingdom been troubled by litigation arising from the internal disorders of the Fraternity. Now and again, however, splenetic members of the Craft have thought it not beneath them to drag Freemasonry from the seclusion of the Lodge-room into

the turmoil of the Forum. Whether this be done by individual Brethren who have persuaded themselves into a state of aggrievedness, or by Lodges who seek to enforce supposed rights, the appeal to Caesar is equally injudicious. In the case of ordinary litigants, who are concerned only about oysters already opened, the Lawyer is like to secure the oyster, or ever it gets to Caesar. In our case, in the efforts to open the oyster in Court, the bivalve always gets the best of it, leaving only maimed hands and wounded joints to the oyster-openers, who find themselves compelled to pay for an entirely different and more succulent oyster required of them by the Lawyers.

By undesigned coincidences, born, doubtless, of the strained temper of those stirring times, the beginning of the present century found the Grand Lodges of England, of Ireland, and of Scotland, involved in legal proceedings, each in its own country. Our more particular purpose is to bring before the present generation of readers the long-buried records of a test case, in which the Grand Lodge of Ireland was concerned. But the coincidence of a litigious spirit, to which we have before alluded as existing contemporaneously in the Three Kingdoms, makes it expedient to glance at the Law proceedings in which the Sister Grand Lodges were severally involved about the same time.

THE GRAND LODGE of England found itself in 1815 unexpectedly mixed up in an action which had been brought against one William Finch, a personage of notoriety, rather than of reputation. This remarkable charlatan, said to have begun life as a tailor in Canterbury, found it easier to earn a livelihood as a purveyor of spurious Masonic literature than as a vendor of honest broadcloth. The public were better judges of the latter

commodity. He developed the idea of printing and publishing original, very original, esoteric Lectures, which were, he averred, the true, inward, and altogether lovely Ritual of Freemasonry, hitherto known to no one but himself. Such was the nobility of his nature that he proposed to share this profound knowledge with a select few, merely stipulating for a small pecuniary remuneration, which, he unctuously assured the public, was ridiculously inadequate to the sublimity of his communications. This traffic he actually carried on from 1795 to 1815 To do the rascal justice, he wrapped up his incoherent lucubrations in a variable cipher that masked their worthlessness, while it whetted the curiosity of the illiterate. Craftily working out this vein of false profundity, he illustrated his cryptographic pamphlets with copious sheets of hieroglyphical sketches. He took good care that these embellishments should be so irrelevant as to appear equally recondite in the eyes of the initiated and the uninitiated. Omne ignotum pro magnifico, quoth the ancient Roman, and, though the words of the adage were beyond Finch, yet the idea underlying them was his base of operation. The air of mystery he contived to throw around his ciphers and illustrations, backed by unblushing asseverations that his Lectures were, if not the real Ritual, at least, highly superior expansions of it, gave him a sort of vogue during the first ten or a dozen years of this century. But the very ease with which he duped the outer world that had no touchstone for his wares proved his bane. He would not stoop to pay his debts. At last, in 1814, his long suffering engraver, a base plebeian by name, Thomas Smith, took out a summons against him to enforce payment of an overdue account. The case came on at the Westminster Palace Court in January, 1815, and Finch pleaded as a set off that he had initiated Smith into the most exalted mysteries of Freemasonry. This service was of incomparably greater value than any copperplates could possibly be. Smith took the bull by the horns. By the evidence of the Grand Secretaries of the United Grand Lodge, and of the Grand Chaplain, the Rev. Dr. Hemming, who was specially qualified to speak on the question of Ritual, he was easily able to show that whatever it was that Finch had palmed off upon him, it was not an Initiation into Freemasonry. The exposure was complete. The case had seemed trivial. The sum claimed was under five pounds. The Court from which the summons issued was of mere local jurisdiction. But Finch's bubble had been pricked. He had been accustomed, apparently, to play off the Antients against the Moderns. When challenged by the one, he proclaimed himself of the School of the other. The Union of the two Grand Lodges in 1813, and the assimilation of their varying

codes, rendered this game no longer possible. The supply of dupes fell off. His creditors pressed their claims. The destruction of his illicit traffic in Spurious Rituals involved the destruction of his more legitimate business as a bookseller. Here is an advertisement of his that tells its own tale:

★ TO FREEMASONS, BOOKSELLERS, &c. The Brotherhood are respectfully informed that the printed Lectures in the various degrees

in Masonry, as well those that have been printed under the SANCTION of the GRAND LODGE, as the others that have been printed without such sanction, are now to be sold off and discontinued:—
They contain the Makings, Passings, Raisings, Exalitations,

LECTURES, and all other CEREMONIES, &c. &c., which are now to be had with the greatest variety of Masonic Plates from 10s. 6d. to 1l. 10s. The above cheap sets of Lectures will enable Masons to obtain more information in one day than they could otherwise procure in many years.

Also, 7000 Volumes, and other Articles comprising his Stock in Trade, as a Bookseller. See the particulars in the Catalogue price 1s. 6d.

W. FINCH, Bookseller, sign of the FREEMASON'S ARMS, No. 5 Charlotte-Place, New Cut, Lower Marsh, Lambeth.

The Business to be disposed of on moderate terms.

This advertisement appeared in the London newspapers of July, 1816. The action had come to a hearing only in the January of the preceding year. Finch had spent twenty years in building up an edifice of imposture: a few months were enough to demolish it. Within the year, the wretched man died, in want, as Dr. Mackey tells us, of the common necessaries of life. Verily, the mills of the Gods grind slowly, but they grind exceeding small.

The oddest circumstance connected with Finch's career of chicanery is that it had a reflex action on Freemasonry, through more than one channel. We must take into consideration that, although Finch was unlettered, he was endowed with a cunning that amounted to astuteness, a mendacity that approached imaginativeness, and an effrontery that knew no qualms. The brazen assertion in the advertisement quoted above, that he supplied the Brotherhood with

"Lectures in the various degrees of Masonry as well those that have been printed under the sanction of the Grand Lodge, as the others that have been printed without such sanction."

was admirably calculated to deceive the unwary. Nay, it positively implied some sort of official countenance, or authorisation. How were Brethren of the obedience of the Antients

to know that he had no such sanction from the Moderns? were the Moderns, in their turn, to know that he was totally unconnected with the Antients? When the Brethren belonged to sequestered Lodges in remote provinces, or distant colonies, there was every prospect of their taking Finch's cipher at his own valuation. And this did actually happen in America, as well as in England. Some copies of Finch's precious Lectures, enshrined in mysterious cipher, and garnished with allegorical engravings, found their way across the Atlantic. They attained the same sort of currency among honest Brethren that forged banknotes do in the hands of innocent holders. Finch's hieroglyphics begot the whole crowd of Secret Manuals, private Monitors, cipher Rituals, and whatnot, that to this day grow apace, like weeds, in the garden of our American Brotherhood. Nay more, much of the Ceremonial and Symbolism, of the heterogeneous side Degrees that bedizen American Freemasonry, and, perhaps some of the more erratic developments of the Craft, sprout from this tainted soil. We must concede that Finch was ingenious as well as unscrupulous. Some of his unwarrantable amplifications are so designed as to appear moulded on the well-known lines of our ancient Symbolism. It will be worth the while of some archæological Brother in the United States to wade through Finch's pretentious vapourings for the purpose of tracing the indebtedness of the still more pretentious side Degrees to this forgotten impostor's trash. Many cherished illusions will disappear in the progress of that research.

In the next place, Finch supplied the material which another rascal sought to foist on the public as Freemasonry. Ten years after Finch's death, Richard Carlile, the Atheist-to-day we call that kind of animal an Anarchist-whiled away his time in Dorchester gaol, by compiling another true, genuine, and authentic Ritual of Freemasonry. The task presented, what we may politely call some difficulty; for Richard Carlile was never at any time a Freemason. He had no particular knowledge of the methods, and still less of the secrets of the Craft. He had never during his life stood in a Lodge at labour. He had no insight into either our internal hierarchy, or our external organisation. How then did he compile his Ritual? He fell back on Finch's stuff, which he swallowed as of unimpeachable validity. One can imagine the degree of confidence to be reposed in an exposition of Freemasonry by an arrant outsider, disreputable in character, and totally ignorant of his subject; whose source of inspiration was a contemptible apostate, doubly disreputable in character, and legally proved to be unworthy of credence. Freemasonry has met critics who show undoubted shrewdness in the affairs of life, but who would fain attribute substance to Carlile's caricature of Finch's fictions.

WHILE FREEMASONRY in the English capital was thus purging itself of noxious humours, Freemasonry in the Scottish capital was rent by a schism which, at one time, bid fair to establish two rival Grand Lodges in Scotland. The Scottish Lodges are of incomparable antiquity. Like the vieille noblesse, they pay the penalty of pride of ancestry by claims of precedence, only too apt to engender jealousies and bickerings. The smouldering fire suddenly leaped into a flame in 1807. The Grand Lodge of Scotland does not seem to have acted with its wonted wisdom. Instead of resting on the merits of the actual case, the Grand Lodge authorities diverged into side issues of Lodge rights and Lodge precedence. Instead of resting on the sure basis of the willing obedience of the members of our volunlary Society, they sought to enforce their disputed claims by appeals to the strong arm of the Law. The proceeding was ill-advised, and

the result gives ample food for reflection.

The circumstances were these. In 1807, at a time when civil excitement was inflaming men's minds, Dr. John Mitchell. R.W. Master of the Caledonian Lodge, Edinburgh, moved in Lodge a resolution which was held, by his political opponents, to savour of the politics they abhorred. For this, Dr. Mitchell was unfortunate enough to incur the censure of Grand Lodge. dispute seems to the present generation to have been trivial in origin. But it became embittered as time went on. The Grand Lodge imported side-issues. Dr. Mitchell and the Lodges that took part with him were charged with illegality under the Secret Societies Act of 1700. Considerations foreign to the original plaint were forced on. The Grand Lodge brought into the Law Courts a case in which it was worsted. Many Lodges had, from the first, thought the proceedings of Grand Lodge to be harsh beyond what was warranted by established usuage. Now, they found the claims of that Body scouted by the tribunal to which They formed themselves, in 1808, into a it had appealed. separate organisation under the designation of "The Associated Lodges seceding from the present Grand Lodge of Scotland." The unseemly litigation dragged on for years. The original cause of dispute was wellnigh lost sight of amid the side issues. Everything seemed to foster the flame of disaffection. But the kindly spirit of Scottish Freemasonry, in the long run, proved equal to the task of reconciliation. The original cause of offence was condoned on the one hand. On the other, the ill-advised appeal to the Law Courts was ignored. The incidental irritation

engendered by the quarrel was allayed by mutual forbearance, and the most serious schism in the history of the Scottish Grand Lodge came to an end in 1813.

CONCURRENTLY with these events, the Grand Lodge of Ireland emerged triumphantly from a similar ordeal. The episode was much more important, from the legal point of view, than either of those narrated above. Dragged into the Law Courts by an ill-conditioned and ill-intentioned official, who had been discharged for gross malfeasance, the Grand Lodge of Ireland established, once for all, the legal right of the Craft, as an organised Society, to govern its constituent members in accordance with its own Laws. The judicial decision was of the more importance, as it had been thought that the internal government of the Craft was seriously interfered with, if not altogether done away with, by the Secret Societies Act of 1799. The case took rank as a "leading case," and served as a precedent afterwards in Prosecutions and Commissions of Enquiry that had todeal with other associations. Hence, the contemporary Report of the legal proceedings may have an interest for outsiders as well as for ourselves.

In order to understand the situation, a few words of explanation will not come amiss. In 1796, Bro. Gorges Darcy irvine became Grand Secretary. This office in the Grand. Lodge of Ireland is purely Honorary, all the duties being performed by a salaried assistant, the Deputy Grand Secretary. Bro. G. D. Irvine was a county magnate from the North of Ireland. His brother, Colonel William Irvine, M.P., had been for many years Provincial Grand Master of Ulster. The Deputy Grand Secretary of Ireland in 1796 was Bro. Thomas Corker, who had held the office from 1767. In accordance with the pernicious custom of the century, the reversion of Bro. Corker's appointment was in the gift of the Grand Secretary, and, in an evil hour, was promised to Bro. Alex. Seton, a Dublin barrister. Thomas Corker, "worn out with age and infirmity" died in December, 1800, and Seton succeeded to his post as a matter of course. Seton will probably be best known to Masonic students as the unscrupulous depredator whose first act of authority was to carry off "a hackney-coach load of papers" from poor Corker's ill-kept archives. Seton proved unsatisfactory in money matters. He bitterly resented the check placed on his manœuvres by the introduction of a Deputy Grand Treasurer. He tried to embroil the Brethren by inflaming Provincial jealousies, and by misrepresenting the attempts of Grand Lodge to bring the R.A. and H.K.T. Degrees under some central authority. He was dismissed from the post of Deputy Grand Secretary in 1806. His patron, Gorges Darcy Irvine, not having been reelected to office in 1805, the new Grand Secretary, a barrister named John Leech, appointed Wm. Francis Graham in Seton's stead. Seton refused to be got rid of, illegally detained the archives of Grand Lodge, and temporarily ousted the Grand Lodge from its usual place of meeting, which formed an admirably misleading address for the floods of circulars and manifestos with which he inundated the Lodges.

It is difficult to overstate Seton's insolent audacity: the wonder is that Grand Lodge showed itself so forbearing. At length, in April 1807, he was expelled, and notice of his expulsion was sent round to the Lodges in the following colour-less circular.

GRAND LODGE OF IRELAND.

Thursday, 2nd April, 1807.
Right Worshipful ALEX. JAFFRAY Esq., D.G.M.,
on the Throne.

BROTHER JOHN LEECH ESQ., Grand Secretary, informed THE GRAND LODGE that pursuant to their order made on the 5th of March last he had demanded the Books and other Muniments the Property of this GRAND LODGE to be given up by Brother Alexander Seton, late Deputy Grand Secretary, which demand had not been complied with.

"RESOLVED

"That ALEXANDER SETON be expelled "this Grand Lodge and Masonry in General"

ALEX. JAFFRAY,

D.G.M.

JOHN LEECH, G.S.



In the cant of the day, Seton at once "slapped an action" against Grand Lodge. He claimed £2000 damages for libel, and went to extraordinary lengths of personal malice in the preliminary proceedings. He took the precaution of laying the venue at the Omagh assizes, where his patron, Bro. Gorges Darcy Irvine, exercised unbounded influence. The action, accordingly, was tried at the Co. Tyrone assizes in 1808. By great good fortune, the Judge of Azzize, the Rt. Hon. Justice Daly, was one of the ablest on the Irish Bench. Consequently, Seton's attempt to make the matter a personal struggle between himself

and his successor, Bro. W. F. Graham,—an attempt only too successful in the preliminary proceedings we have hinted at,—was foiled, and the case was decided on broad legal principles, to the utter discomfiture of Seton.

It will be observed that Counsel for the plantiff mentioned the Grand Lodge of England. This means the Grand Lodge of the Antients, which worked hand in hand with the Grand Lodge of Ireland. We have got so far from the days when two Grand Lodges co-existed in England, and the pious panegyrics of the "blessed Union of 1813," have given our history such a twist, that some of us seem to find it hard to understand that, at the period with which we are dealing, the title GRAND LODGE OF ENGLAND meant to the great majority of English-speaking Freemasons, the Grand Lodge of the Antients, and no other. Certainly, in the *Minutes* of the Grand Lodge of Ireland it has no other meaning.

With these prefatory remarks, the following contemporary report will show the turn taken by the proceedings in Court, albeit the phraseology of the reporter could easily have been

improved.

SETON v. GRAHAM.

Tyrone Assizes [1808,] North-west Circuit.

Before Rt. Hon. Mr. Justice Daly and a Common Jury. At the Assizes for the County of Tyrone, held at Omagh an action was brought by Alexander Seton Esq., a barrister at law against a Mr. William F. Graham of Dublin, which was tried

before Judge Daly, and a special jury.

The declaration was opened by Counsellor T. Maklin, who stated that "the plaintiff brought his action against the defendant for defamation and the publication of three several libels;—the first, a resolution, dated 2nd April, 1807, of the Grand Lodge of. Free Masons in Ireland, stating, that Alexander Seton had been expelled the Grand Lodge and Masonry in general;—the second, cautioning the Brethren against receiving or sanctioning certificates signed A. Seton, dated since 1st May, 1806, as he had not held any office under the Grand Lodge since that period;—and the third, being the resolutions of the Grand Lodge of England, dated London, September, 2, 1807, stating that the Grand Lodge of England would not on any account, receive or acknowledge any certificate issued by or under the hand of the said Alexander Seton, dated any time subsequent to the 5th of June 1806, nor should any person by virtue of such certificate, be thereby received into any lodge under the Grand Lodge of England. plaintiff laid his damage at 2000l., and the defendant pleaded the general issue."

"The case was opened, on the part of the plaintiff, by Counsellor Rolleston, who, at great length expatiated on the injury done to the character and property of the plaintiff, by thus stating to the public his expulsion from so ancient and respectable a Society, and the natural ignominy and disgrace that would attach to his character, if the jury did not in damages prove to the country, and to the Society, the falsehood of such a charge, which only could be done by their verdict. The learned counsel also stated, that by this action the right of the plaintiff would be proved to the situation of the Deputy Grand Secretaryship to the Free Masons of Ireland. The Court would thereby instruct the members of the Order where they ought to apply for such Masonic documents as they had occasion for, the defendant having assumed upon himself the situation, and thereby claimed the fees that were attached to the office; and also in that right publishing and circulating the libels on which the present action was founded."

The plaintiff then proved the publication and circulation of the alleged libels, and after the examination of several wit-

nesses, closed his case.

The learned Judge then intimated his opinion that the plaintiff should be non-suited. "The plaintiff having stated his determination to appear, and not submit, but leave the question to a jury of his country, the defendant's counsel declared, that out respect to the Court, they would not state any case, nor

call any evidence."

The Judge, "after a most able and eloquent charge, and having gone into all the minutiæ of the evidence," directed the jury to find for the defendant. The jury retired, and, after some consideration, brought in a verdict for the defendant, with 6d. costs, "thereby affirming the right of government of the Grand Lodge; clearly ascertaining the justness and propriety of publishing the expulsion of any its members; and determining the defendant to be its proper officer."

That Seton had not overrated the probable predilection of the Tyrone jury in favour of the protégé of their local magnate is clear from the amount of costs awarded. It was the only loophole left by the Judge's direction, and the jury took prompt

advantage of it.

Of course, a turbulent knave of Seton's character could not accept defeat. He appealed at once to the full Court, and the appeal was heard at the next ensuing sittings. Again, the Grand Lodge and its authority were sustained, as will appear from the following Report:—

"COMMON PLEAS, DUBLIN, 1808.

ALEXANDER SETON Esq., Barrister at Law v. WILLIAM FRANCIS GRAHAM Esq., on Appeal.

"This was a motion on the part of the plaintiff to set aside the verdict had for the defendant at the Assizes at Omagh, On the report of the Right Hon. Judge Daly, who tried the action, it appeared that the plaintiff had declared, in the situation of D.G. Secretary to the Grand Lodge of Free Masons in Ireland, for the publication of libels, stated to be circulated and published by the defendant, to the following effect:—among others, 'Grand Lodge of Ireland, Thursday, April 21, 1807, Resolved, That, Alexander Seton be expelled the Grand Lodge, and Masonry in general.' And, that by evidence given on the part of the plaintiff, the action was brought more to try his right to the office of Deputy Grand Secretary in the Grand Lodge of Ireland, than anything else. The other libels alleged to be published, were the subsequent acts of the Grand Lodges of England and Ireland, confirming such expulsion of Mr. Seton. The learned Judge, in his report, which was very full, and embraced the entire of the evidence given by the plaintiff, stated his opinion that the plaintiff ought to have been non-suited, but the plaintiff having directed his agent to appear, and not having submitted, he had directed the jury to find for the defendant, the plaintiff's evidence not supporting the declaration. The Court, on hearing the learned Judge's report, did not conceive it necessary to call on the defendant's counsel, and after hearing for a considerable length of time counsel for the plaintiff, Lord Norbury, C. J., was pleased to declare his opinion as follows:—

That the action on the part of the plaintiff, was a mere contest for office: a scramble for emolument; and so appeared by the declaration and evidence; that the plaintiff's refusal to be nonsuited was an indiscretion; that if the publication were unnecessary, and not according to the duty of the defendant, that then it would be a different case, and one that ought to be left to the jury; that the right to the office was the matter in contest, and that the Court had not any right to interfere; that the plaintiff stated the Society to be of a very good length of standing, being upwards of seventy years old; that it, therefore, had a right to act as it thought proper within legal limits, and that it appeared the several publications were distributed and sent to the different lodges of Free Masons in Ireland, as information to that body, by the defendant, Mr. Graham, who was then the officer of the Order; and that nothing in the case was to be left to the jury, but whether the defendant acted, as directed by the Order, in his situation; and that it appeared he only communicated the publications to the Order in that light; that the Society was regulated by its own laws, and the plaintiff could have resorted to it for relief, if he had thought proper; that the plaintiff himself had set forth the Institution, and the laws of it, and on them grounded his case, and that if the Court believed him, it followed he held no right to the office; that under such circumstances the Court would not disturb the verdict, and the Judge's report was not only full in every respect, but manly and correct."

Judge Fox in observing on this case, declared it a very novel one, in the form of an action for defamation. After stating the first count in the declaration, he observed, "that if a man defamed a character, not being called on by his office to do so, it was libellous; but that this case would not stand this test." He referred then to the publication which was as follows ;--" Grand Lodge of Ireland, Thursday, 2nd of April 1807, Brother John Leech Esq., Grand Secretary, informed the Grand Lodge pursuant to their order made on the 5th of March last he had demanded the books and other muniments, the property of this Grand Lodge, to be given up by brother Alexander Seton, late Deputy Grand Secretary, which demand had not been complied with: 'Resolved, That Alexander Seton be expelled this Grand Lodge and Masonry in general. Alexander Jaffray D.G.M. John Leech, G.S.' That the publication contains more than is set out on the face of the defendant's declaration; that by it, it appeared that the cause of the expulsion was for not giving np the books of the Order, and that in consequence of the plaintiff's disobedience he was expelled; that it could not be contended that it was libellous, if a man acted contrary to the Society he was a member of, and was expelled that Society, to state the fact; instancing the case of expulsion of a member of a club for not paying his subscription, and the publication and distribution of it among the members; that as to the special damage laid in the plaintiff's declaration, it was not material, it appearing that the publications were made in discharge of the defendant's duty; that it could not therefore be taken as a libel."

The learned Judge compared the case of Sir John Carr, tried not long before in England, and said "you might extract libel out of Holy Writ, if you stooped at particular sentences, and did not take in the whole context."

"That it appeared by the plaintiff's evidences that the defendant, Mr. Graham, acted as a Mason and Secretary to that Body; that he took the order of expulsion from the Chair, and then published it; that it was his (Mr. Graham's) duty to do so; and

that the business of a Society could not exist if it were otherwise; that it could not be looked upon as a libel, being within the sphere of the person doing it, and that therefore no action could be sustained for it; that the declaration was not sustained by the publication; that no publication appeared out of the Order, and that the publications distributed appeared necessary; that, therefore, the verdict ought to stand, and the cause shown by the defendant be allowed with costs; thus ascertaining the right of the Grand Lodge of Free Masons in Ireland to expel the members who act contrary to their Laws, and proving the defendant, William Graham, to be their Deputy Grand Secretary."

Mr. Justice Fletcher: -- "I concur in opinion with the rest

of the Court."

Appeal dismissed, with costs.

It is greatly to the credit of the Grand Lodge of Ireland that its fraternal feelings were not exhausted by Seton's perversity. Even after this verdict had annihilated Seton's pretensions, goodnatured efforts were made to heal the schism, which by this time had grown into the self-styled Grand East of Ulster. All in vain. The Grand Lodge was compelled, in 1808, to file a bill in chancery to recover its own muniments. At the best of times, a chancery suit is tedious. This one was prolonged for nearly five years by Seton's alternate policy of shifty evasion and truculent insolence. At length the Grand Lodge recovered such of its archives as survived Seton's devastating hand. In 1805, seven volumes of Registers are recorded as in existence amid "the hackney coach load of papers." Alas, only two of them came back in 1813; an irreparable loss.

The pleasantest part of the story is that the Grand Lodge of Ireland, having established a legal precedent by which the whole Craft "wheresoever dispersed over the surface of the earth" might profit, emerged triumphant from the struggle just in time to join with the sister Grand Lodge of Scotland, simultaneously relieved from discord, and the other Grand Lodges that belonged to the Antient Obedience, in welcoming the United Grand Lodge of England into the fold of English-speaking Grand

Lodges.

