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PSYCHIC PHENOMENA AND THE LAW

*Credere nil sapiens amat, omnia credere simplex;
Scilicet hic aliis credulus, ille sibi.*

AT the outset the writer disclaims any desire to take a position one way or another upon the occurrence or the real nature of what are called psychic phenomena. He knows nothing more about them than may properly be expected of one who is moderately acquainted with the literature of the subject and has always been fond of ghosts.¹ The position which the law takes is entirely independent of the true nature of the phenomena themselves, or of their actual occurrence, but depends only upon a belief in the minds of the living in regard to supposed actions of or communications from the dead. No one can examine the literature of the subject, which has become very large, not only in English but in French, German, and Italian, without learning that in the presence of a kind of person described as a medium² there purport to occur communications from persons deceased, sometimes by rapping noises, sometimes by a voice speaking, but usually by what is called automatic writing, in which the hand of the medium writes, in a continuous script, apparently without conscious control, the supposed communications, the medium being either wide awake or in some cases in a state of trance. Automatic writing seems to be a fairly common phenomenon and has the advantage of leaving a permanent record.³ Modern spiritualism is based mainly on these supposed communications, beginning about seventy years ago. The alleged phenomena are very often simulated, either consciously by charlatans, some of them of the worst kind, or perhaps unconsciously by hysterics. Just what really occurs is not very clear. The curious things are the continual personation of the dead and

¹ The safest place to search for ghosts (always excepting the Bible) is in the *ENCYCLOPEDIA BRITANNICA*, where one should read Mrs. Sedgwick's "Spiritualism" and Andrew Lang's "Psychical Research," "Apparitions," "Hauntings," "Crystal Gazing," "Second Sight," and especially "Poltergeist."

² Compare *Leviticus* xix. 31; *1 Samuel* xxviii. 3-25; *ENCYCLOPEDIA BRITANNICA*, article "Medium."

³ See *ENC. BRIT.*, articles "Automatic Writing" and "Divination."

the selection of information by the supposed communicators. The important fact for legal purposes is that some people believe that they receive communications from the dead, and that under the influence of this belief they do various legal acts in which such a belief has legal importance.

One must not approach the subject assuming that all of the alleged communications are fraudulent. The reported cases, especially where old people have been overreached, would make one ready to believe that all mediums are rogues. But only the cases of fraud get into the courts. Some of the mediums themselves believe in spiritualism. It would be a large order to condemn all professional mediums without investigation, and the professionals are insignificant in number compared with the amateur mediums who are to be found in every walk of life. Goethe, Victor Hugo, and Sardou are said to have written automatically.⁴ Many amateur mediums are undoubtedly sincere.

It would be also an error to assume in advance that all the alleged communications are unintelligent. It would not be unreasonable to expect intelligent communications from an intelligent medium, and in fact the communications are sometimes quite intelligent. It is like conversation. The communications sometimes assume the shape of requests or commands. They may be insistent enough to control the will, intelligent enough to convince the intellect, appealing enough to sway the affections, assuming that the recipient of the communications believes them to be what they purport to be.⁵ There is a real legal problem here.

It would also be an error to assume that all people who entertain spiritualistic beliefs are unintelligent.⁶ Not to mention a few prominent names of the hour in the scientific and literary world which have been identified with such ideas, most of us have known people who accepted such communications, and were, to say the least, intelligent enough to perform any kind of legal act.

⁴ Spence, *ENCYCLOPAEDIA OF OCCULTISM* (1920), article "Automatic Writing." The articles on "Mediums" and "Spiritualism" are worth consulting.

⁵ For a vivid illustration of this from current literature, see MAGNUSSON'S *GOD'S SMILE* (from the Danish).

⁶ *Carnahan v. Hamilton*, 265 Ill. 508, 107 N. E. 210, 215 (1914); *Crumbaugh v. Owen*, 238 Ill. 497, 87 N. E. 312 (1909); *Raison v. Raison*, 148 Ky. 116, 146 S. W. 400 (1912); *In re Sieb's Estate*, 70 Wash. 374, 126 Pac. 912 (1912); *Steinkuehler v. Wempner*, 169 Ind. 154, 164, 81 N. E. 482 (1907).

In the interest of brevity I shall not use the word "alleged" before communications and other psychic phenomena, assuming that the reader will always consider it as there when they are spoken of. Since the writings of Swedenborg, almost everybody agrees that the communications come not from angels or demons, as was previously believed, but from human beings, spiritualists claiming that the communications, or some of them, are from human beings out of the body, or at least out of their own bodies,⁷ while the skeptics claim the communications come from the minds of living persons. In determining what legal effect is to be given to spiritualistic communications believed to be genuine by the recipient, the communications should be treated for legal purposes as if the supposed communicators had still survived, and made the communications.⁸ Justice and common sense require that the judge or jury should put themselves, as well as they can, for this purpose in the place of the believer. If, for example, a person believed that his dead mother told him to make a certain devise, the communication should be dealt with, so far as the believer is concerned, as if it had in fact been made by his mother. The more importance is given to these communications the easier it will be to break wills or contracts made under their control. In case of a gift or a will the same questions of fraud and undue influence arise as in case of communications from persons in the flesh. There is of course an additional factor which arises where the medium acts fraudulently or in bad faith. If the recipient of the communications believes them to be genuine, a confidential situation arises similar to that of a guardian, attorney, physician, or spiritual adviser, and gifts or legacies directly or indirectly in favor of the medium should be treated in the same manner as in case of other confidential relations which may have been similarly abused. One of the most celebrated cases of this character⁹ is that of the gift to D. D. Home,

⁷ See ENC. BRIT., article "Possession." A few authors still hold out for the theory of demons; works cited in article "Spiritism," CATHOLIC ENCYCLOPEDIA. See also KIESEWETTER, GEHEIMWISSENSCHAFTEN, 749 (Leipzig, 1895).

⁸ *Robinson v. Adams*, 62 Me. 369, 409 (1874). Although it is fully recognized by the decisions that belief in spiritualism is not an insane delusion, being based upon some evidence and believed by many people, upon the justice of the rule there is an analogy in the law of criminal responsibility where an insane person is given the benefit of his delusion as if it were true. 16 CORPUS JURIS, 101 (1918).

⁹ *Lyon v. Home*, L. R. 6 Eq. 655 (1868).

possibly the most famous medium on record, by an aged English woman who adopted him as a son, and gave him great sums under the advice, as she supposed, of spirits. She was allowed to recover the property on account of the confidential relation between the parties. The report of the case is quite interesting. Vice Chancellor Giffard pays his respects to spiritualism as follows:¹⁰ "The system, as presented by the evidence, is mischievous nonsense, well calculated, on the one hand, to delude the vain, the weak, the foolish, and the superstitious; and, on the other, to assist the projects of the needy and of the adventurer."¹¹ It is interesting to note from the evidence reported that the supposed communications to Mrs. Lyon were made by the process of Home's saying over the alphabet and waiting for raps. The ordinary principles of fraud and undue influence are sufficient to deal with the situation. Payment for services as a medium is of itself a great temptation to fraud. The customer must have something for his money. Mediumistic powers are said to be fleeting and wavering, so that phenomena cannot be produced at will and frequently cease entirely, for no apparent cause.

The problem of spiritualism in the making of wills is largely one of undue influence.¹² Where the mind of the testator is controlled by the communications in which he believes, the testament may cease to be the expression of his own will; the will of another may be expressed in the testament instead of his own. The pressure exerted on the testator's mind has been real and overmastering, no matter where it came from.

If, however, the communications have not overcome the will of the testator, we are in the familiar realm of statements, suggestions, requests, and demands addressed to the testator. Reinforced by the belief of the testator in their genuineness, they may have great weight, perhaps even more than if the person from whom they are believed to come had made them before death, because of the natural reverence felt for the dead and the very common idea that somehow the dead know more than the living or have been improved by dying. But these notions do not create a difference in

¹⁰ *Lyon v. Home*, L. R. 6 Eq. 655, 682 (1868).

¹¹ See *In re Willitt's Estate*, 175 Cal. 173, 165 Pac. 537 (1917).

¹² See *In re Randall*, 99 Me. 396, 59 Atl. 552 (1904); *Irwin v. Lattin*, 29 S. D. 1, 135 N. W. 759, 763 (1912); *Dalloz* 1910, Part 5, p. 3, Trib. Civ. de la Seine, 30 Nov., 1909. For the last citation I am indebted to Mr. Edward B. Adams.

kind. The mere fact that the will follows suggestions in spiritualistic communications should no more avoid it than if the suggestions came from living persons whose influence upon the testator would have been as great. While a belief in spiritualism is not insanity, an actual monomania about spiritualism will avoid a will, just like any other insanity which affects its provisions.¹³

Cases on witchcraft have been purposely omitted, as carrying us too far afield, although they may contain a little material which would be relevant here. Witchcraft cannot be explained completely unless we assume the presence sometimes of psychic phenomena.¹⁴

In *Addington v. Wilson*¹⁵ the court held, in an interesting opinion, that a belief in witchcraft was not evidence of such insanity as disabled a person to make a will.¹⁶ A criminal case holding that a belief in witchcraft is not of itself an insane delusion is *Hotema v. United States*.¹⁷

In *Burchill v. Hermameyer*¹⁸ the plaintiff sued to recover back ten thousand dollars paid for stock in an oil company upon the

¹³ *O'Dell v. Goff*, 149 Mich. 152, 112 N. W. 736 (1907); *Orchardson v. Cofield*, 171 Ill. 14, 49 N. E. 197 (1898). See generally notes in 37 L. R. A. 270 (1897) and 15 L. R. A. (N. S.) 674 (1908).

¹⁴ Especially is this true of the life of Saint Joan of Arc, who suffered as a witch. See Spence, ENC. OCC., article "Jeanne D'Arc," citing her Life by Andrew Lang. For the skeptical view he cites her Life by Anatole France. Upon the whole subject see Spence, article "Witchcraft." The latest theory is that witchcraft was the survival of an aboriginal cult. 1 WELLS, OUTLINE UNIVERSAL HISTORY, Am. ed., 373-374. For a list of articles about witchcraft in legal periodicals, see the writer's article entitled "The Conjurer" in 7 VA. L. REV. 370, at page 373 (Feb., 1921).

¹⁵ 5 Ind. 137, 139 (1854).

¹⁶ Note in 37 L. R. A. 272.

¹⁷ 186 U. S. 413, 421 (1902). The Twelve Tables punished bewitching another's hanging fruit or spiriting away a crop from his fields, with death. MUIRHEAD, ROMAN LAW, 2 ed., 140; 1 STRACHAN-DAVIDSON, PROBLEMS OF THE ROMAN CRIMINAL LAW, 107. See also *Ib.*, Vol. II., 173, 199; SCOTT'S VISIGOTHIC CODE, 204-205; MOMMSEN, RÖMISCHES STRAFRECHT, 639, 861; MENDELSON, THE CRIMINAL JURISPRUDENCE OF THE ANCIENT HEBREWS, 48, 56; CODE OF HAMURABI, § 2; VON BAR, HISTORY OF CONTINENTAL CRIMINAL LAW, 45, 183, 226, 243; 2 REICHEL, COMPLETE MANUAL OF CANON LAW, 62. That there never was any considerable evidence of the supernormal in witchcraft, see Note on Witchcraft by EDMUND GURNEY, PHANTASMS OF THE LIVING, 172 (1886). Also at page 119 he says: "A few cases are recorded, on respectable authority, of a remarkable susceptibility, shown by persons whom we might now recognize as hypnotic 'subjects,' to the conscious or unconscious influence of some absent person supposed to be a witch; and perhaps also of abnormal powers of discernment on the part of the supposed witches themselves."

¹⁸ 212 S. W. (Tex. Civ. App.) 767 (1919). For this case and a number of others herein cited the writer is indebted to the courtesy of the West Publishing Company.

ground of fraud, a part of the fraud being that plaintiff believed what the defendant was telling him about spiritualistic predictions that oil underlay the defendant's land. The court says:¹⁹

"There was considerable other evidence relating to Spiritualistic communications as to the existence of oil underneath the lands in question, and we should perhaps notice the subject a little more particularly. We do not care to say that spirits from the great beyond may not visit and communicate with the living, nor that it is impossible for man's spiritual powers to be so developed and purified as to constitute a medium for communication with disembodied beings, for the phantasm of today is so often a reality of tomorrow. But these subjects belong to realms and powers that as yet must generally be classed as purely speculative, and not so established by evidences cognizable by the law which we are required to administer as to be classed as facts — as among proven things. Indeed, we think it may be said that a belief that the living, through the agency of a medium, can receive authentic information from the spirits of the dead, is, in the general acceptance of mankind, a species of delusion, and that such communications, in general acceptance, are of too unsubstantial a character to be received as representations of fact. We think, therefore, that the representations of the defendants, if any, to the effect that spirits had revealed, through a medium, the existence of oil in valuable quantities beneath the lands in question, must, under the circumstances of the case, be regarded as insufficient to form a basis for relief to plaintiff."

People not only consult mediums about making wills but about all sorts of business.²⁰ We suggest that a much simpler way to deal with the problem is to treat the person who consulted the medium the same way as if he had consulted a living person and received the same advice. The one who consults the medium cannot object to having the transaction taken at its face value, the advice of a human being, and a just result would be reached without indulging in any speculations about spiritualism.

In *Steinkuehler v. Wempner*²¹ the following extracts are made from the opinion:

"It is entirely legitimate and proper for the wife to seek the advice of her living husband, and after death to pay some regard to his known

¹⁹ 212 S. W. (Tex. Civ. App.) 771 (1919).

²⁰ In an appendix to MAXWELL'S METAPSYCHICAL PHENOMENA is an account of a French speculator who was ruined by spiritualistic tips.

²¹ 169 Ind. 154, 164-165, 81 N. E. 482 (1907).

wishes in the preparation of her will; but, when such pretended counsel comes through the dubious channel of a 'medium,' as an oracle from one possessing knowledge of the great hereafter, under the solemn surroundings of the seance, its influence upon a credulous mind can hardly be measured. The indulgence of such belief and practices may be so long continued and of such a character as to affect the mental status. The conduct of the decedent with relation to this subject, shown by the evidence, was a proper matter for the consideration of the jury in connection with other evidence upon the subject of testamentary capacity. A mere belief in spiritualism may be harmless and of no concern to any one other than its possessor, but occult 'revelations' cannot be permitted to control the practical affairs of this world, and the belief upon this subject and consequent conduct of the testatrix with reference to the making of her will was particularly relevant upon the question of undue influence. It appears that the instrument in question was prompted, to some extent at least, by these spiritual communications, and it was the province of the jury, under proper instructions, to determine whether such 'revelations' constituted such undue influence as invalidated the will."

In *Irwin v. Lattin*,²² a case involving the competency of a spiritualist to make a will, the court quoted with approval the following extract from the opinion in *McClary v. Stull*:²³

"Law, it is said, is 'of the earth, earthy,' and that spirit-wills are too celestial for cognizance by earthly tribunals, — a proposition readily conceded; and yet the courts have not assumed to deny to spirits of the departed the privilege of holding communion with those of their friends who are still in the flesh so long as they do not interfere with vested rights or by the means of undue influence seek to prejudice the interests of persons still within our jurisdiction."

In the case cited of *McClary v. Stull* the will was sustained, although there was in the record evidence which tended to prove that the testatrix was a believer in the doctrine of spiritualism and seems to have been under the impression that she could directly and through the instrumentality of the planchette communicate with the spirits of the dead, including her deceased husband.²⁴ According to the evidence quoted, she consulted planchette about her affairs.

²² 29 S. D. 1, 135 N. W. 759 (1912).

²³ 44 Neb. 175, 62 N. W. 501 (1895).

²⁴ 44 Neb. 175, 185-186, 62 N. W. 501 (1895).

*In Nurse v. State*²⁵

"Appellant was convicted of swindling. The false representations and deceitful pretenses are that he represented to one Alexander that he, appellant, was a spiritualist, and worked with spirits, and that the spirits had told him that there was a large sum of money buried on the property of said Alexander, and that if he, Alexander, would give to him, appellant, \$20, he would find a large sum of money and give it to Alexander, and that by this means he obtained the sum of \$20 in exchange for the services rendered and to be rendered in discovering the place where the large sum of money was buried. . . . Alexander testified that about a year before the trial his house settled and he procured the services of Will Mabry to dig down on one side and put in a new foundation. 'After that one of our doors kept rapping — rapping every day and night — and made such a peculiar noise that we became suspicious. My wife and I would see lights²⁶ around the place where they had dug to fix the foundation. I have always heard that where you would see lights at night there was money buried.'"

Some digging was done in the attempt to find the money. Alexander's wife kept seeing lights and hearing the door rattle. He was talking to Jim Nurse, and Nurse told Alexander that there was money buried in the yard, and that Nurse would find it for Alexander for \$20. Nurse, according to the evidence, dug up \$42 and afterwards more out of the hole, but under Nurse's advice the money was buried again, for Nurse said that there was some more money in the hole, and if the money was handled that the spirits would "vanish it all." It was charged that after Nurse had caused the money to be buried again he came back that night and stole it. The court said:²⁷

"If appellant made the representations that he was a spiritualist and could talk with spirits, this matter raised the question about which this court does not feel called upon to discuss or decide. . . . There is no evidence in regard to the matter, one way or the other, that is, as to whether or not appellant conversed with the spirits, or called them up and tested their veracity, but the fact is uncontroverted, whether he talked with the spirits or not, that he found the money as he promised." ²⁸

²⁵ 59 Tex. Cr. 354, 355, 356, 128 S. W. 906 (1910). Compare the case of Mirabel in ANDREW LANG, *COCK LANE AND COMMON SENSE*, 251.

²⁶ Acts xii. 7.

²⁷ 59 Tex. Cr. 355, 357, 128 S. W. 906 (1910).

²⁸ 1 Samuel ix. 3-10; x. 2.

The conviction was reversed. This case has some bearing on the next question.

Would proof of the truth of the medium's statements be a good defense to a charge of fraud? In *Dean v. Ross*²⁹ the plaintiff sued for the conversion of fifteen bonds which the defendant had induced the plaintiff to give her by what purported to be directions from the spirit of the plaintiff's deceased husband, speaking through the defendant as a medium. Judge Bond instructed the jury, "If there was a message received from the husband, and the defendant simply delivered the message, believing it to be true, to this plaintiff, why then that would not be any false statement with reference to the transaction; that would be a true statement, and I meant you to understand that then the plaintiff could not recover, if that was a fact and that was a real communication."³⁰ This ruling was not passed upon, on appeal. The plaintiff recovered. Nothing is said (perhaps it was overlooked) about the confidential relation of the parties raising a presumption of fraud. Apart from that and assuming there was evidence by which the question was presented, in case for example the bonds had been given by direction of the purported message to a stranger, was not this a proper charge to the jury? A contrary rule is open to the accusation of injustice, not to say bigotry, and simply plays into the hands of the charlatan, who will then be able to claim that he was forcibly prevented from showing the truth. Instead of the medium not being allowed to prove the truth of his statement, he should be invited to prove it. This particular proof the world has been waiting for a long time.

The following is taken from "The Night Side of Nature"³¹ by Catherine Crowe:

"The account is extracted verbatim from a work published by the Bannatyne Club, and is entitled, 'Authentic Account of the Appearance of a Ghost in Queen Ann's County, Maryland, United States of North America, proved in the following remarkable trial, from attested notes taken in court at the time by one of the counsel.'

"It appears that Thomas Harris had made some alteration in the disposal of his property, immediately previous to his death; and that the

²⁹ 178 Mass. 397, 60 N. E. 119 (1901).

³⁰ *Ibid.*, 399.

³¹ (New York, 1853), p. 257. A more condensed and critical account is in COCK LANE AND COMMON SENSE, 269, where it is suggested that there was a conspiracy of counsel to make Briggs tell his story under oath.

family disputed the will and raised up difficulties likely to be injurious to his children."

In the text follow three pages containing William Briggs' testimony as to repeated appearances after death by Thomas Harris, and of Briggs' conversations with him and Briggs' receiving from Harris a message to Harris' brother in regard to a conversation in life between the two brothers alone about how the estate of Thomas Harris should be managed for the best interests of his children.³² The surviving brother recalled the conversation and undertook to carry out the wishes of the deceased. The witness testified as to the misbehavior of his horse³³ on the appearance of the apparition, and that on one of the occasions when the ghost appeared to and conversed with the witness another person was present but saw nothing. The doings of the apparition as narrated resemble the ghostly incidents in William De Morgan's novel "The Old Mad House" and have parallels in spiritualistic literature. The witness testified that he had a further conversation with Thomas Harris' apparition but not on the subject in litigation. The book goes on as follows:³⁴

"The counsel was extremely anxious to hear from Mr. Briggs the whole of the conversation of the ghost, and on his cross-examination took every means, without effect, to obtain it. They represented to him, as a religious man, he was bound to disclose the whole truth. He appeared agitated when applied to, declaring nothing short of life should make him reveal the whole conversation, and, claiming the protection of the court, that he had declared all he knew relative to the case.

"The court overruled the question of the counsel. Hon. James Tilgman, judge.

"His excellency Robert Wright, late governor of Maryland, and the Hon. Joseph H. Nicholson, afterward judge of one of the courts in Maryland, were the counsel for the plaintiff.

"John Scott and Richard T. Earl, Esqs., were counsel for the defendant."

It is very difficult at this day to sustain such a ruling upon the question of privilege.³⁵ The interesting thing legally is the thoroughly matter-of-fact way these phenomena were dealt with, ac-

³² Gen. xix. 1-3.

³³ Numbers xxii. 23-35.

³⁴ CROWE, *THE NIGHT SIDE OF NATURE*, 260, 261.

³⁵ See 40 CYC. 2390, 2392, 2394; WIGMORE, *EVIDENCE*, §§ 2285, 2286; *Lindsey v. People*, 66 Colo. 343, 181 Pac. 531 (1919).

cording to the account given. The suit of *Webster v. Molesworth* in 1835 before the Sheriff of Edinburgh was for injuries done a house by boring holes trying to find out the cause of mysterious poltergeist noises.³⁶ According to Andrew Lang³⁷ the papers in the case are still in existence, and he examined a number of documents relating to it in the office of a firm of solicitors employed in the case. Andrew Lang has found for us the affidavit of Mr. John Mompesson of Tedworth, in the celebrated haunting case of the *Drummer of Tedworth*³⁸ (April, 1663), which gives the appearance of haunting by a spirit of a person still living, and has also given us an abstract of the evidence in 1851 in judicial proceedings for defamation arising out of a haunting at Cideville, France, by a musically accomplished poltergeist. The court found that the cause of the phenomena was unknown.³⁹ An account of much more serious poltergeist occurrences at Lipzy in Russia, — where the phenomena finally resulted in the burning of a house,⁴⁰ July 25, 1853, but the court was unable to find any one responsible, — which is contained in a long series of official documents, including the depositions of numerous witnesses and a report to the Czar, will be found in German translation in Aksakoff's "Vorläufer des Spiritismus," 33.⁴¹ At page xi, note, Aksakoff, who was a high official in the Russian service, refers to several other Russian cases in judicial proceedings.⁴² In 1767 there were shocking criminal proceedings on account of rappings at Dibbersdorf, Germany.⁴³ In 1852 one Abby Warner, a medium, was charged with disturbing religious services at Massillon, Ohio, by loud raps, and the defense was made that

³⁶ See ROBERT DALE OWEN, *FOOTFALLS ON THE BOUNDARY OF ANOTHER WORLD*, 10 ed., 181 (London, 1860), citing MRS. CROWE, *NIGHT SIDE OF NATURE*, 445-447 (Routledge & Co's. Ed.), 400 Redfield's Ed. (New York, 1850). Mrs. Crowe interviewed one of the counsel, and gives a very lively account of the happenings. She says beds were also heaved up as if some one were under them, but no one was there. With these two books our ancestors used to scare themselves delightfully.

³⁷ ENC. BRIT., article "Poltergeist."

³⁸ 17 PROC. SOC. FOR PSYCHICAL RESEARCH, 308; there were also court proceedings in this case. A convenient reference is "Spiritualism in the days of Charles II," the case of the Drummer of Tedworth, 117 CONTEMPORARY REV. 87, 91 (Jan., 1920).

³⁹ 18 PROC. SOC. PSYCH. RESEARCH, 454-463; Mr. Lang had a copy of the entire record. For a lively account of the case, see his chapter, "A Modern Trial for Witchcraft," in *COCK LANE AND COMMON SENSE*, 274.

⁴⁰ 1 Kings xviii. 38.

⁴¹ (Leipzig, 1898.)

⁴² This is the author of *ANIMISM AND SPIRITISM*, which fills a large place in spiritualistic literature.

⁴³ KIESEWETTER, *GEHEIMWISSENSCHAFTEN*, 396-399 (Leipzig, 1895).

the defendant did not rap and had no control over the raps. The defendant was acquitted.⁴⁴ Those who are curious about revelations of murders by apparitions, haunted houses where tenants have refused to pay rent, important information in dreams, and the like, are referred to the articles on "Law and Apparitions" by Mr. William White Ackerley,⁴⁵ and "Wills and Ghosts" by Mr. E. Vine Hall.⁴⁶ Much of the material is traditional and cannot now be verified.

In *Craven v. Craven*⁴⁷ the plaintiff was suing for the recovery of real estate under a will made by his uncle, Jasper Barker. The following quotations are made from the opinion of the court:

"This suit was commenced by appellee August 18, 1910, for the recovery of certain real estate in Hendricks County, with rents and profits; to quiet title thereto, and asking for partition. The appellee's claim is based on a devise contained in a will, alleged to have been made September 20, 1864, the maker of which died, December 13, 1864, the will never having been probated or offered for probate until April 14, 1909, forty-four years after its execution. . . .

"As appellee claims, his uncle Jasper Barker, although having been dead for more than forty-four years, appeared to him in a vision or dream, and told him of the existence of a will and that it was in possession of Enoch Scotten, who still lived in the neighborhood, and who upon request of appellee produced and gave him the will. It was presented for probate on April 14, 1909, on the testimony of Enoch Scotten, whose name with F. M. York appeared as witnesses to its execution forty-four years, six months, and twenty-four days after its execution."

The statute of limitations was held a good defense, the court intimating that the dream had been too long deferred.

In *Ex parte Jack*⁴⁸ there was a habeas corpus proceeding in which bail was refused. Jack was charged with the murder of C. T. Stewart, who it is conceded died of strychnia poisoning. The following extract is from the statement of facts:

⁴⁴ A suit for defamation also grew out of the circumstances. 1 *PODMORE'S MODERN SPIRITUALISM*, 304. *THE ARREST, TRIAL AND ACQUITTAL OF ABBY WARNER, etc.*, by Mrs. S. A. Underhill (Cleveland Plain Dealer Press), copy in Congressional Library.

⁴⁵ 21 *CASE AND COMMENT*, 453, also at page 506, and see especially the chapter on "Ghosts before the Law" in *LANG'S COCK LANE AND COMMON SENSE*. Similar accounts appear from time to time in the newspapers. Two recent murder cases of this kind will be found in the *New York Times* of Jan. 25 and March 10, 1921.

⁴⁶ 21 *CASE AND COMMENT*, 464.

⁴⁷ 181 Ind. 553-556, 103 N. E. 333 (1913). Compare, for example, Matt. ii. 12, 13, 22.

⁴⁸ 22 So. (Miss.) 188 (1897), not in the official reports.

"Mrs. C. T. Stewart testified that her husband took a capsule about the time he went to bed, and in about 15 or 20 minutes thereafter he threw up his arms, looking very wild out of his eyes, and seemed to be cramped and in great pain; that he had a convulsion, and, after she had given him some whisky and coffee, he had another convulsion, and when he revived he made the following statement: 'I am going to die. I have been dead, and the Lord sent me back to tell you that Dr. Lipscomb poisoned me with the capsule that he gave me to-night. Guy Jack had my life insured, and he hired Dr. Lipscomb to kill me;' that he soon had another convulsion and died."

Upon the entire evidence the court held that bail should have been allowed.

In *Lipscomb v. State*⁴⁹ the same statement was offered in evidence as a dying declaration. It appears that only Mrs. Stewart and a negro man were present, that the statement was voluntarily made by the deceased and without suggestion of any kind. The majority of the court held that the statement that "Dr. Lipscomb has killed me, has poisoned me with a capsule he gave me to-night," was admissible as a dying declaration. To this opinion the court adhered in a second appeal of the case.⁵⁰ Dr. Lipscomb was twice convicted, but died in jail before transfer to the Penitentiary. At the second trial the defendant himself offered in evidence, and was permitted to prove, the entire declaration.⁵¹ This includes the statement of the declarant that he had been dead and that the Lord had sent him back to tell the story of his death.

As we might have learned from witchcraft cases, there is no peculiar rule of evidence for supernatural phenomena. A man may prove them, if he can, just like any facts.

A statement that a house is haunted is actionable. Several unreported cases, in one of which the poet, Stephen Phillips, was tenant of the house, are mentioned in an article on "Ghosts in Litigation."⁵² Upon its criminal side the attitude of the law towards professional spiritualists is very unfavorable. In England they are punishable as rogues and vagabonds.⁵³ A gift for chari-

⁴⁹ 75 Miss. 559, 574, 23 So. 210 (1897).

⁵⁰ 76 Miss. 223, 25 So. 158 (1898).

⁵¹ 76 Miss. 254, 25 So. 158 (1898).

⁵² 27 CANADIAN LAW TIMES, 243 (1907). For an early French case, with references to mediæval law on the subject, see COCK LANE AND COMMON SENSE, 269.

⁵³ 22 HALSBURY'S LAWS OF ENGLAND, 612; 5 GEO. IV, chap. 83, § 4. For American cases see "Legal Status of Seers and Necromancers," by L. Arthur Wilder,

table purposes, otherwise valid, will be sustained although it promotes belief in spiritualism.⁵⁴ A gift to found a spiritualistic church is valid.⁵⁵

If this article should find readers, some will undoubtedly think that there are no psychic phenomena, and this is really the only comfortable view.⁵⁶ There may be some obscure human faculty, or more than one, at work here, just as there was in "Mesmerism," now (after having twice survived being discredited by a host of charlatans) everywhere accepted under the name of Hypnotism.⁵⁷ The main difficulty about psychic phenomena is not with the law, but with the facts, and what is worse, the explanation of them. The law we have already.

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21 CASE AND COMMENT, 445, 451 (Nov., 1914). See especially note upon "Prohibition of fortune telling and kindred superstitions," 43 L. R. A. (N. S.) 203 (1913), which includes cases on giving spiritualistic seances for a reward. Also see *City of Chicago v. Payne*, 160 Ill. App. 641 (1911), affirmed on appeal, 257 Ill. 76, 100 N. E. 159 (1912). Those who profess to cure disease by means of spiritualism may be punished for practising medicine without a license. Note, L. R. A. 1917C, 828. Where a professional medium has assistants he may be convicted of a conspiracy to defraud. *People v. Gilman*, 121 Mich. 187, 80 N. W. 4 (1899). For the Italian law, see Part 3 of *LA SUGGERZIONE E LE FACOLTA PSICHICHE OCCULTE IN RAPPORTO ALLA PRATICA LEGALE E MEDICO-FORENSE* (Turin, 1900), by SALVATORE OTTOLENGHI. A hint as to the German law applicable to fraudulent mediums is given at page 148 of *DER FALL ROTHE* by DR. JUR. ERICH BOHN (Breslau, 1901), an exposure of the "flower-medium" Anna Rothe. Frau Rothe was prosecuted later, see Dr. Maxwell's articles in *REVUE PHILOMATHIQUE DE BORDEAUX*, Année 7, pp. 97-117, 158-178 (Bordeaux, 1904). For a French case, see the article by Francis Wharton cited later (spirit-photography by one Bruguet, who was convicted of fraud), also referred to in *LEHMANN'S ABERGLAUBE U ZAUBEREI*, 2 ed., 323.

⁵⁴ *Jones v. Watford*, 62 N. J. Eq. 339; 50 Atl. 180 (1901).

⁵⁵ *Owen v. Crumbaugh*, 228 Ill. 380, 81 N. E. 1044 (1907); a good case.

⁵⁶ For accounts of spiritualistic phenomena *semper et ubique* see "Savage Spiritualism," by Andrew Lang, 23 LONGMAN'S MAGAZINE, 482 (1894), and especially his book, *THE MAKING OF RELIGION*; "Mesmerism, Planchette and Spiritualism in China," by H. A. Giles, 99 FRASER'S MAGAZINE, 238 (1879); JACOLLIOT, *OCCULT SCIENCE IN INDIA*, Fourth Part. The subject is intimately connected with early magic: "Malay Spiritualism," by Walter Skeat, 13 FOLKLORE, 134, also his book, *MALAY MAGIC*; "Animism, Sorcery and Spiritualism," by C. Mercier, 227 EDINBURGH REVIEW, 49 (1918); LAPPONI, *HYPNOTISM AND SPIRITISM*, pp. 20-54; TYLOR, *PRIMITIVE CULTURE*; ENC. BRIT., article "Demonology." An article by Francis Wharton on "Spiritualism and Jurisprudence," 16 LIPPINCOTT'S, 423 (1875), deals mainly with the history of magic and witchcraft on their legal side. He refers to the legislation against magicians in the civil law collected in *CON. IX*. 18.

⁵⁷ ENC. BRIT., article "Hypnotism."