

## SPIRITUALISM AND JURISPRUDENCE.

MR. ALFRED RUSSELL WALLACE, known as well for his patient explorations as a naturalist as for his capacity for philosophical analysis, has lately published a series of essays which give us the most authoritative defence of Spiritualism that has yet appeared. In some respects the phenomena to which he testifies lie beyond the range of the present inquiry. Whether A is able to make a table twirl round his chamber is a matter of no juridical interest, supposing the table belongs to A, and A hurts nobody by the act. So if A and B agree that A shall apply to B a power which makes B move about the chamber in obedience to A's will, this also is a matter of no juridical interest, supposing that no immoral or illegal act results. It would be otherwise, however, should A, instead of making a table move from one end of a room to the other, make a purse move out of B's pocket without B's consent. So it would be otherwise if A, instead of compelling B to float in the air, should compel B to commit a crime. As the power claimed by Mr. Wallace is one which would be as effective for the latter class of cases as for the first, and as Mr. Wallace's exposition of the causes of the occasional viciousness of "spirit messages" is that bad spirits as well as good get hold of the medium, it may be not without interest for us to inquire what is the attitude assumed by jurisprudence toward the factor to whose existence so respectable and accomplished an expert as Mr. Wallace thus testifies. And, to avoid those prejudices which are involved in names, I propose to speak of the factor thus introduced to our notice, not as "Spiritualism," nor as "witchcraft," nor as "sorcery," but as "preternaturalism." The alleged power to suspend ordinary natural laws, without any motive consistent with the divine economy, may be called in one age by one of these titles and in another age by another; but so far as

concerns jurisprudence the question, whatever may be the verbal form, presents itself in the same light. What attitude is jurisprudence to assume toward a person who, charged with an invasion of the laws of the land, sets up as a defence that he was acting under the constraint of a superior spiritual power? What attitude is jurisprudence to assume toward those who exercise such power for an illegal end?

These inquiries, let it be first observed, are not new. That such powers could be exercised by men charged with peculiar supernatural gifts was believed by large classes of society at the time of the formation of the Roman law. Ephesus was one of the chief seats of this belief, and by the priests of the temple of Diana magical functions were claimed to be effectively exercised. The introduction of Christianity was followed by a general rising, within the bounds of the Roman empire, of schools maintaining that preternatural power by man over men could be acquired by initiation in their mysteries. Judaism presented a sect of magicians who claimed that Solomon, whose spirit was appealed to as having taken up his abode on earth, was their chief and their patron. By Hermes Trismegistus an Egyptian school of mystical magicians was organized. Neopythagoreanism exhibited a magician in the person of Apollonius of Tyana; Neoplatonism, in the person of Iamblichus; the Samaritans boasted of the enchantments of Simon Magus; even Gnosticism had its mighty prophets who by a mere effort of the will could compel obedience even from their foes. By the jurists whose opinions are collected in the Justinian Code no criticism is ventured on preternaturalism as a mode of causation. Against magic, however, the emperors launched several decrees. To either profess magical arts or to consult magicians was made penal.\* But magic as a re-

\* See the decrees collected in Cod. IX. 18.

sponsible causation appears never to have been judicially investigated. We learn, indeed, from history that necromancers were tried as impostors and subjected to degrading punishments. But even when it was popularly believed that an emperor had been killed by the magical arts of an empress, or that through the enchantments of a rival an heir to the throne had wasted away, no prosecution was attempted against the supposed malefactor. *Cogitationis pœnam nemo patitur*. The law could only judge of physical causation: wishes, hatreds, even enchantments, were agencies which the law had no capacity to determine.

The close of the Middle Ages, however, witnessed a new era as to magic. The possession by certain individuals of special magical gifts became a tenet of science as well as of superstition. When chemistry exhibited itself as alchemy, and astronomy as astrology, it is not strange that psychical influence should be confounded with physical, and physical with magical. In England, the enchantments of Merlin were accepted as part of the national history: on the Continent, Albertus Magnus, wizard as he at the best was, was a hero of popular theology. The order of the Templars united in its creed a secret adoption of Arabic supernaturalism with an open profession of Christianity. Even scholars recognized the old necromancies as reviving in potency with the revival of literature, and hence we find in the speculations of those days a motley combination of old heathen mythology, of the old Jewish Cabbalistic enchantments, of the black arts of Talmud divination, of Gnostic dualistic theosophy, and of Arabian necromancy. Causation by preternatural agencies exercised by man was as much believed in as was causation by natural agency. It was not strange, therefore, that as evil causation in the latter case was prohibited by law, so it should be held that evil causation in the former case should be in like manner prohibited.

Yet jurisprudence, in its technical sense, was not alone in the attempt thus to restrain this kind of preternatural causation. The Church, as having exclusive

power over ecclesiastical offences, was on questions of this class at least co-ordinate with the secular judiciary, and the Church in its judicial capacity began the work of investigating and controlling preternatural causation. The first record we have of the procedure is the *Directorium Inquisitorium* of Nicholas Eymericus, written in the middle of the fourteenth century, in which the author, an influential canonist of the Dominican school, maintained that every attempt to exercise preternatural causation was heretical, and was to be punished as heresy. But the Church was not allowed on this plea to absorb control of this offence. The Parliament of Paris in 1398 passed a statute by which the trial of magicians (by which term we must hereafter designate all persons claiming to exercise preternatural causation) was transferred from the ecclesiastical to the secular courts.\* But from this a singular political complication ensued. Under this very statute the English government, claiming to administer in France French laws, and at the time holding possession of Paris, executed in 1431, with the approval of the University of Paris, Joan of Arc. It was natural, therefore, when Charles VII. obtained undisputed possession of his throne, that a statute capable of being so abused should be regarded with disfavor; and though the principle of the statute was, as we shall presently see, carried by the English back to their own country and incorporated in their jurisprudence, it was dropped from that of France.

But magicians were not to remain unpunished because Joan of Arc had been barbarously burned. In 1484, Pope Innocent VIII., finding that the secular power in France was unwilling to execute the statute of 1398, issued the bull *Summis desiderantes affectibus*, declaring that magic was heresy, and authorizing ecclesiastical prosecutions against magicians of all classes. The execution of this bull was committed in Germany to Jacob Sprenger and Heinrich Institor, Dominican priests, who published a famous work in elucidation of the bull and

\* See Soldan's *Hexenprocesse*, p. 191.

in specification of the processes by which it was to be enforced. This book, entitled the *Malleus maleficarum*, bore date in 1487, and has been since frequently republished. The title, it will be noticed, places the evil persons whom it was designed to correct in the feminine gender, it being admitted by the authors that there might be male magicians (wizards), but it being recognized as an indisputable fact that of the two sexes the female was far the most addicted to intercourse with the devil: "Dicatur enim femina a *fe* et *minus*, quia semper minorem habet et servat fidem, et hoc ex natura."\* Speculatively, the treatise recognized Dualism, for it held that there were certain demons who operated *divina permissione*. Practically, there was no cruelty which the Inquisition had applied to heresy that was not, through the agency of Pope Innocent's bull, transferred to witchcraft.

The Reformation in Protestant Germany put a stop to proceedings under the Romish Inquisition, but not to the prosecution of witches in the secular courts. Indeed, magic, in the turmoil of thought that accompanied the Reformation, seemed to be recalled to fresh life, and multitudes of sorceries which had for centuries been submerged were again, by the power of the whirlpool, brought to the surface. Wallenstein's history is an illustration of the way in which characters the most powerful were affected by these agencies. The statute-books of those days show how serious the danger was believed to be. Thus, in the code issued by the elector Augustus of Saxony in 1572 the penalty of death by fire (*Feuertod*) is assigned to the crime of entering into covenant with the devil (mit dem Teufel ein Verbündniß zu schaffen)—an offence which, if taken generally, would be dangerously comprehensive, and if taken specially, would be very hard to prove. During the fifteenth century, so tells us one of the most authoritative of German jurists,†

\* It is remarkable that the same notion of the sex of witchcraft was accepted both in England and in New England.

† Wächter, *Die gerichtlichen Verfolgungen der Hexen und Zauberer*, Tübingen, 1845.

"there were occasional prosecutions of witches and wizards; but when we scrutinize the trials, and subtract those in which the defendants were guilty of actual crimes, such as poisoning, infanticide, public cheating, the cases of conviction were rare. At the end of the fifteenth century, however, Germany began to be seized with a witch-epidemic (Hexenepidemie). Prosecutions for witchcraft were the order of the day. Thousands of wretches from that period to the beginning of the eighteenth century were burned, and all on their own confession." To England, as we shall presently see, as well as to France, Spain, Sweden and Italy, did this epidemic in the seventeenth century extend. In a large measure this is attributed by Wächter to what he calls the "secularization of witchcraft prosecutions," which took place in the Protestant states. But other causes mentioned by this keen critic should be carefully scanned by ourselves. The first was the reaction from the materialism engendered by the Thirty Years' War. The second was the introduction, in criminal trials, of the defendant's own examination—an innovation which, whether for good or for evil, is now exhibiting itself in the legislation of most of our American States. With us, it is true, this examination is optional with the defendant, and as yet a party on trial is able to decline to be examined without infusing into his case a fatal presumption of guilt. In Germany, however, in the seventeenth century, such examination was virtually compulsory, and without confession no man could be convicted. From this the transition was easy to the converse proposition, that after confessing no one could be acquitted. And as most witches put on trial confessed their witchcraft, most witches put on trial were convicted of witchcraft.

Von Raumer, in his late remarkable criticism of the character of King James I., has maintained that the belief of that monarch in witchcraft was no proof of imbecility, since that belief was shared by the wisest princes of the day. By none of those princes, it is true, was this belief so discursively vindicated as it

was by James in his *Demonologia*. But we must remember that he reached his conclusions not without the concurrence of the highest juridical as well as philosophical authorities. Thus, we find Bacon, in the *Preparation for the Union of Laws*, or, as we should call it, Draft of a Proposed Code, introducing the following clauses:

"Where a man doth use or practice any manner of witchcraft, whereby any person shall be killed, wasted or lamed in his body, it is felony.

"Where a man practiceth any witchcraft to discover treasure hid, or to discover stolen goods, or to provoke unlawful love, or to impair or hurt any man's cattle or goods, the second time, having been once before convicted of like offence, it is felony."\*

Coke's authority is to the same purport.† Indeed, by statute 33 Hen. VIII. c. 8, all witchcraft or sorcery was made felony; and by 1 Jac. I. c. 12, this was extended so as to include the "hurting any person" by the "infernal arts" of "witchcraft, sorcery, charm or enchantment." Under this statute occurred the trial of Mary Smith in 1616 for witchcraft. She was convicted and executed, confessing her guilt. The evidence against her was chiefly to the effect that by some occult power of will she brought sickness and death upon certain persons who had incurred her enmity.

Much more remarkable are the trials in Scotland in 1660-70 of persons charged with witchcraft—trials on which Sir Walter Scott expatiated with his usual felicity of style in his work on *Demonology*, but the full records of which were for the first time published in Pitcairn's rare and valuable collection of the *Criminal Trials in Scotland in the Reigns of James IV. and V., Mary, and James VI.* In 1661, so Pitcairn, quoting from Baron Hume, informs us, "no fewer than fourteen commissions for trials of witches were granted, for different sections of the country, in one sederunt of the 7th of November." Of the prosecutions that ensued, Pitcairn has select-

ed several of the most striking, giving at large the confessions of the defendants, as well as the acts of the Privy Council relative thereto. The prosecutions were barbarously conducted, for the convictions were made mainly to rest on the defendant's confessions, without adequate proof of the *corpus delicti*; and these defendants were desolate old women, crazed, if not congenitally at least by their belief in their possession of preternatural powers, by the extraordinary spiritualistic visions of which they believed themselves to be the media, as well as by the popular violence of which they were the objects. They held, according to their confessions, what might now be called "séances" or "trance conditions" with disembodied spirits; and these spirits sometimes played pranks such as those to which Mr. Wallace admits that spirits of the meaner class are even now addicted. But the preternatural power thus summoned did not content itself, as is the case in Mr. Wallace's experience, with such innocent tricks as the production of flowers instantaneously, with the untying inside of a closet of persons previously tightly tied, and the moving round a room of tables and chairs. Issobell Gowdie confessed to having used her spiritual correspondent for purposes much less innocent. Thus, at one time she wanted to get some fish without either catching or buying. So, when a boat was about to come in she and her companions went to the "shoresyd," and there sang "thrie severall times over"—

"The fisheris ar gon to the sea,  
And they will bring hom fishe to me:  
They will bring them hom intill the boat,  
Bot they shall get of thaim bot the smaller sort."

"So," she goes on to confess, "we either steal a fish, or buy a fish, or get a fish from them (for nowght), aw or ma." This might be called putting the fishermen in a trance condition so as to poach their fish. In worse work than this, however, did Issobell Gowdie, according to her own account, engage. She and her friends had a particular grudge against "Mr. Harie Forbes, minister at Aulerne." They prepared a decoction

\* Bacon's *Works*, Spedding's ed., xv., 327.

† 3 *Inst.*, 44.

of toad's flesh, and while they were steeping this in water "Satan wes with us, and learned us the wordis following, to say thryse over. They are thus :

- " He is lying in his bed—he is lying seik and fair ;  
 Let him lye intill his bed two monethis and thrie  
 days mair :
2. Let him lye intill his bed—let him lie intill it  
 seik and sore ;  
 Let him lyne intill his bed monthis two (and)  
 thrie days more !
  3. He sall lye intill his bed, he sall lye in it seik  
 and sore ;  
 He sall lye intill his bed (two montheis and) thrie  
 days mor."

Such was the preliminary incantation ; and after having thus raised their "spirit forces" to a proper tension, the women, whether as professed nurses or not, obtained access to Mr. Forbes's sick room, having with them the bag containing the decoction of toad. They first attempted what might now be called a mesmeric process on Mr. Forbes by "swinging the bag" over him, he being apparently unobservant of their proceedings. This does not seem to have succeeded ; and then the same exercise was attempted by "ane of ovr number, quho was most familiar and intimat with him" (Mr. Forbes) in the day-time. Whether Mr. Forbes was reduced to the trance condition by these experiments, or whether he ultimately survived, we are not informed.\*

The latest witch-prosecution to which I shall refer is that of Amy Duny and Rose Cullender in 1665, before Chief-Justice Hale. Of this trial Lord Campbell in his life of Hale thus speaks : " I wish to God that I could as successfully defend the conduct of Sir Matthew Hale in a case to which I most reluctantly refer, but which I dare not, like Bishop Burnet, pass over unnoticed. I mean the famous trial before him, at Bury St. Edmund's, for witchcraft. I fostered a hope that I should have been able, by strict inquiry, to contradict or mitigate the hallucination under which he is generally supposed to have then labored, and which has clouded his fame—even in some degree impairing the usefulness of that

\* Dr. Davies, a critic not unfriendly to Spiritualism, in his work on *Mystical London* (London, 1875) details performances not unlike those stated in the text. Spirits of evil appeared at the séances, and one of these spirits was exorcised by a priest.

bright example of Christian piety which he left for the edification of mankind. But I am much concerned to say that a careful perusal of the proceedings and of the evidence shows that upon this occasion he was not only under the influence of the most vulgar credulity, but that he violated the plainest rules of justice, and that he was really the murderer of two innocent women. . . . Had the miserable wretches indicted for witchcraft before Sir Matthew Hale pleaded *guilty*, or specifically confessed the acts of supernatural agency imputed to them, or if there had been witnesses who had given evidence, however improbable it might be, to substantiate the offence, I should hardly have regarded the judge with less reverence because he pronounced sentence of death upon the unhappy victims of superstition, and sent them to the stake or the gibbet. But they resolutely persisted in asserting their innocence, and there not only was no evidence against them which ought to have weighed in the mind of any reasonable man who believed in witchcraft, but during the trial the imposture practiced by the prosecutors was detected and exposed."

The evidence amounted to little more than that two girls named Pacey were thrown by passes made by the defendants into trances something like catalepsy, and that "pins and twopenny nails" were in some way conveyed by the defendants into the girls' mouths. An "expert in demonology," Dr. Brown of Norwich, was called to prove the reality of these manifestations of supernatural power, and gave it as his belief that one person, by the exercise of such power, is able in this way to act physically upon another. Lord Hale charged the jury as follows : "Gentlemen of the jury, I will not repeat the evidence unto you, lest by so doing I should wrong it on the one side or the other. Only this I will acquaint, that you have two things to inquire after : first, whether or no these children were bewitched ? secondly, whether the prisoners at the bar were guilty of it ? That there are such creatures as witches I make no doubt at all ; for, first, the Scriptures have affirmed so much ; secondly,

the wisdom of all nations hath provided laws against such persons, which is an argument of their confidence of such a crime; and such hath been the judgment of this kingdom, as appears by that act of Parliament which hath provided punishments proportionable to the quality of the offence. I entreat you, gentlemen, strictly to examine the evidence which has been laid before you in this weighty case, and I earnestly implore the great God of heaven to direct you to a right verdict. For to condemn the innocent and to let the guilty go free are both an abomination unto the Lord." The defendants were convicted and executed, Hale expressing in his journal his approval of the result.

This is the worst as well as the last conviction which we find in the English records for the offence of illegally using preternatural powers. It must be recollected that the indictment was simply for the use of these powers, not for the use of them for the perpetration of an independent crime. About this time the reaction began. Among the illustrations of the change of public sentiment we may give the following from Montesquieu's *Spirit of Laws*, published in 1748: "It is an important maxim that we ought to be very circumspect in the prosecution of witchcraft and heresy. The accusation of these two crimes may be vastly injurious to liberty, and productive of infinite oppression if the legislator knows not how to set bounds to it. For, as it does not directly point at a person's actions, but at his character, it grows dangerous in proportion to the ignorance of the people; and then a man is sure to be always in danger, because the most unexceptionable character, the purest morals and the constant practice of every duty in life are not a sufficient security against his being guilty of the like crimes."

Blackstone (1765) in his *Commentaries*, speaks with even greater skepticism, and refers with satisfaction to the then recent repeal by Parliament of the witchcraft statutes of James I. and Henry VIII. The lowest point of subsidence, however, was reached at the beginning of

the present century. This is expressed in the following passage in Mr. Edward Livingston's penal code: "It [homicide] must be operated by some act; therefore death, although produced by the operation of words on the imagination or the passions, is not homicide. But if words are used which are calculated to produce, and do produce, some act which is the immediate cause of death, it is homicide. A blind man or a stranger in the dark directed by words only to a precipice where he falls and is killed, a direction verbally given to take a drug that it is known will prove fatal, and which has that effect, are instances of this modification of the rule. Homicide by omission only is committed by voluntarily permitting another to do an act that must, in the natural course of things, cause his death, without apprising him of his danger if the act be involuntary, or endeavoring to prevent it if it be voluntary."\* With more or less closeness the same limitations have been applied by the courts of England and of the United States.

Yet, natural as was this reaction from the hyper-spiritualism of the seventeenth century, it soon began to be felt that the entire ignoring of moral causation in jurisprudence was as unphilosophical as was its exaggeration. Do not some men often acquire such power over others as to make mere brute instruments of them? We may reject the term "moral," and insert "nervous;" and ask whether it is not admitted that the nervous system may be acted on for criminal ends, and then inquire whether such action is not indictable.

Among the first to reopen the discussion was Lord Macaulay, in his report on the Indian code, published in 1838. Macaulay, it will be remembered, when in the maturity of his powers, after having distinguished himself by a series of brilliant and exhaustive speeches on Indian affairs, was appointed secretary of the Board of Indian Control, which post he resigned in 1834 for the purpose of going to India as a member of the Supreme Council. He accepted the office

\* Livingston's *Works*, New York, 1873, ii. 126.

of legal adviser to that body, assuming as his special duty the preparation of a code, for which he prepared himself by a thorough study of jurisprudence, both philosophical and practical. It has been the fashion to speak of his report as speculative, but this is a great error, for there is no writer who has applied the inductive process of investigation to a wider field, or who has more accurately as well as more philosophically scanned not merely the adjudications of the courts on criminal jurisprudence, but the conclusions of those European thinkers who have treated the subject psychologically as well as juridically. So far as concerns the topic immediately before us, Macaulay argues with equal earnestness and eloquence that penal responsibility attaches to a homicide produced by psychological force. "There is undoubtedly a great difference," he says, "between acts which cause death immediately, and acts which cause death remotely; between acts which are almost certain to cause death, and acts which cause death only under very extraordinary circumstances. But that difference, we conceive, is a matter to be considered by the tribunals when estimating the effect of the evidence in a particular case, not by the legislature in framing the general law. It will require strong evidence to prove that an act of a kind which very seldom causes death, or an act which has caused death very remotely, has actually caused death in a particular case. It will require still stronger evidence to prove that such an act was contemplated by the person who did it as likely to cause death. But if it be proved by satisfactory evidence that death has been so caused, and has been caused voluntarily, we see no reason for exempting the person who caused it from the punishment of voluntary culpable homicide.

"Mr. Livingston, we observe, excepts from the definition of homicide cases in which death is produced by the effect of words on the imagination or the passions. The reasoning of that distinguished jurist has by no means convinced us that the distinction which he makes is well founded. Indeed, there are few parts of his

code which appear to us to have been less happily executed than this. His words are these: 'The destruction must be by the act of another; therefore self-destruction is excluded from the definition. It must be operated by some act; therefore death, although produced by the operation of words on the imagination or the passions, is not homicide. But if words are used which are calculated to produce, and do produce, some act which is the immediate cause of death, it is homicide. A blind man or a stranger in the dark directed by words only to a precipice where he falls and is killed, a direction verbally given to take a drug that it is known will prove fatal, and which has that effect, are instances of this modification of the rule.'

"This appears to us altogether incoherent. A verbally directs Z to swallow a poisonous drug; Z swallows it, and dies; and this, says Mr. Livingston, is homicide in A. It certainly ought to be so considered. But how, on Mr. Livingston's principle, it can be so considered we do not understand. 'Homicide,' he says, 'must be operated by an act.' Where then is the act in this case? Is it the speaking of A? Clearly not, for Mr. Livingston lays down the doctrine that speaking is not an act. Is it the swallowing by Z? Clearly not, for the destruction of life, according to Mr. Livingston, is not homicide unless it be by the act of another, and this swallowing is an act performed by Z himself.

"The reasonable course, in our opinion, is to consider speaking as an act, and to treat A as guilty of voluntary culpable homicide if by speaking he has voluntarily caused Z's death, whether his words operated circuitously by inducing Z to swallow poison or directly by throwing Z into convulsions.

"There will indeed be few homicides of this latter sort. It appears to us that a conviction, or even a trial, in such a case would be an event of extremely rare occurrence. There would probably not be one such trial in a century. It would be most difficult to prove to the conviction of any court that death had really been the effect of excitement produced

by words. It would be still more difficult to prove that the person who spoke the words anticipated from them an effect which, except under very peculiar circumstances and on very peculiar circumstances, no words would produce. Still, it seems to us that both these points might be made out by overwhelming evidence; and, supposing them to be so made out, we are unable to perceive any distinction between the case of him who voluntarily causes death in this manner, and the case of him who voluntarily causes death by means of a pistol or a sword. Suppose it to be proved to the entire conviction of a criminal court that Z, the deceased, was in a very critical state of health; that A, the heir to Z's property, had been informed by Z's physicians that Z's recovery absolutely depended on his being kept quiet in mind, and the smallest mental excitement would endanger his life; that A immediately broke into Z's sick-room, and told him a dreadful piece of intelligence, which was a pure invention; that Z went into fits and died on the spot; that A had afterward boasted of having cleared the way for himself to a good property by this artifice. These things being fully proved, no judge could doubt that A had voluntarily caused the death of Z; nor do we perceive any reason for not punishing A in the same manner in which he would have been punished if he had mixed arsenic in Z's medicine."

Mr. Fitzjames Stephen, who has taken a leading part in the formation of a civil code for India, was in 1873 so much impressed with the imperfection of the English law of homicide in this and other respects that he took an active part in the appointment of a committee of the House of Commons for the revision of that law. He was examined as a witness before that committee, and the following is part of his testimony:

"Then the other point in that section, which is an alteration of the existing law, is one which various persons who have seen the bill have remarked upon to me—namely, 'It is immaterial whether the act by which death is caused did or did not inflict actual injury on the

body of the person killed.' Now, with regard to that there are various remarks to be made. In the first place, I think that some of those who favored me with remarks upon the subject, one learned judge in particular, hardly observed that this definition is not a definition of any crime, but is a definition of the act of killing; and if the act of killing were not accompanied by any of the intentions that are stated in the later sections of the bill, the mere fact that a man was killed by some cause which did not inflict actual injury on the body of the person killed would not constitute any crime.

"That answers some objections which may be raised to it, but I would go further by pointing out what the real nature of the rule is, and what I understand to be the principal authority for it. The great authority for the rule (it is repeated of course by other persons of less note in different shapes) is to be found in Hale's *Pleas of the Crown*, p. 429, and is in these words: 'If any man, either by working upon the fancy of another, or possibly by harsh or unkind usage, puts another into such passion of grief or fear that the party either dies suddenly or contracts some disease whereof he dies, though, as the circumstances of the case may be, this may be murder or manslaughter in the sight of God, yet *in foro humano* it cannot come under the judgment of felony, because no external act of violence was offered whereof the common law can take notice, and secret things belong to God; and hence it was that before the statute of 1 Jac. I. c. 12, witchcraft or fascination was not felony, because it wanted a trial, though some constitutions of the civil law make it penal.' Upon that passage I would observe that in the first place I do not think it goes by any means to the length to which modern writers have been apt to carry it—namely, that unless you could show some specific force actually injuring some bodily organ, there can be no murder, but it puts it on this—first, that it is a secret thing; secondly, the passage ends by saying that for this reason witchcraft is not felony. I rather incline myself to



think that this is the explanation of the rule. There were very good reasons, one can quite understand, why, when everybody believed in witchcraft, humane people should not wish to extend trials for witchcraft, and should say, 'There is no actual and obvious injury done by these witches, and therefore we will not go into that.'

"But if you accept that principle in its fullness you arrive at almost monstrous results, and I will just mention a case or two to the committee. I may observe that what I am saying is said with much greater force by Lord Macaulay, in a report which he wrote upon the Indian Penal Code, at the time when they considered this question: he has gone at great length into it, but I will just put a case which I have in my mind. Suppose a man wants to murder his wife, and suppose that she is ill, and the doctor says to him, 'She is in a very critical state: she has gone to sleep, and if she is suddenly disturbed she will die, and you must keep her quiet.' Suppose he is overheard repeating this to another man, and saying, 'I want to murder her, and I will go and make all the noise I possibly can for the purpose of killing her.' You may imagine the evidence to be quite conclusive on that point: he goes into the room, makes a noise, and wakes her up with a sudden start, and frightens her, and she does die according to his wish. It seems to me that that act is as much murder as if he had cut her throat. Or suppose a case like this: a man has got aneurism of the heart, and his heir, knowing that, and knowing that any sudden shock is likely to kill him, suddenly goes and shouts in his ear, and does so with the intent to kill him, and does so kill him. It seems to me that if that man is not punished it is a very great scandal, for the act is just as bad as if he had killed him in any other manner. The fact is, that the objection to treating such cases as either murder or manslaughter arises from this, that in a general way, in such a case as unkindness, or many other cases of the same kind, you could never prove that the man intended either to kill or cause harm, or

that it was common knowledge that there would be harm or death caused; and therefore in all those cases in which you would not wish to punish the person would escape on account of the difficulty of proof. The only cases in which you would ever want to punish would be cases in which the difficulty of proof, by some such means as I have suggested, would be got over."

With this we may consider the remarks of Judge Erskine (a son of Lord Chancellor Erskine) some years since, when charging a jury in a homicide trial: "A man may throw himself into a river under such circumstances as render it not a voluntary act—by reason of force applied either to the body or the mind. It becomes then the guilty act of him who compelled the deceased to take the step. But the apprehension must be of immediate violence, and well grounded, from the circumstances by which the deceased was surrounded; not that you must be satisfied that there was no other way of escape, but that it was such a step as a reasonable man might take."\* But the last qualification cannot be sustained. No one can doubt that it would be murder to entice an insane man over a precipice, and thus to kill him. Indeed, as we shall see, what is done through an insane agent is regarded as done directly by the principal.

So much, then, for the authorities in cases where one man kills or hurts another by acting on the latter's nervous system in such a way as to cause death or sickness. We turn to the other phase in which the question before us presents itself; and here the law is equally emphatic. *He who commits a crime through the agency of an insane or unconscious agent is the principal in the commission of the crime.* This proposition is too plain in principle to require argument in its support; and it is accepted by the courts whenever it is mooted. We have a pertinent illustration in a trial before Lord Denman, C. J., in 1838. The evidence in this case was that the defendant, Thorn, claimed, either fraudulently or honestly, to be possessed of supernat-

\* *Rex v. Pitts*, 2 C. & M. 284.

ural powers, and that in union with a small body of adherents he traversed the county, professing to work miracles. How far he was the tool of his associates, or how far they were really impressed with the truth of his mission, could not be absolutely determined. But on the evidence certain things were clear: a person claimed to possess supernatural powers, and committed homicides in exercise of his supposed mission, and certain other persons encouraged him in the commission of these homicides. The persons so aiding Thorn were put on trial for these homicides, the indictment charging them first as accessories to Thorn, and then as principals. Lord Denman met the case boldly on the principle that he who acts directly through an insane agent is primarily responsible. "It is not an opinion which I mean to lay down as a rule of law to be applicable to all cases," he said, "that fanaticism is a proof of unsoundness of mind; but there was in this particular instance so much religious fanaticism, such violent excitement of mind, such great absurdity and extreme folly, that if Thorn was now on his trial it could hardly be said from the evidence that he could be called upon to answer for his criminal acts." "If these persons . . . were aware of the malignant purpose entertained by Thorn, and shared in that purpose with him, and were present, aiding, abetting and assisting him in the course of accomplishing this purpose, then no doubt they are guilty as principals on this second count."\* In other words, here is an insane agent, claiming to exercise supernatural powers, with whom, if not on whom, the parties accused are operating; this insane agent, when under their power, commits a crime; for this crime they are the persons directly responsible.

It remains to apply the principles just stated to Spiritualism. I put out of the question those professed Spiritualists who are conscious impostors. Such persons, if they obtain money by the exercise of such imposition, are indictable under the statutes which make penal the obtaining

money by false pretences.† Of this principle we have a vivid illustration in a late trial in France, as narrated in the following letter by the Paris correspondent of the *London Daily News*: "A strange trial has taken place before the Correctional Tribunal of Paris, and it has resulted in the conviction of certain 'Spirit Photographers' for swindling. Buguet, a photographer, of No. 5 Boulevard Montmartre, allied himself with M. Leymarie, the editor of the *Revue Spirite*, who wrote about him and published fac-similes of his portraits, and with an American named Firman, from whom he learned the art of persuading people that he could, if they only willed strong enough, conjure up and photograph a likeness of any deceased relation or friend. For a long time the firm did a large business. Twenty francs was the ordinary fee, but many wealthy people voluntarily paid two thousand, three thousand, and even four thousand francs. Never was fraud more clearly proved. The operator's spirit box was produced in court: it contained hundreds of portraits of men, women, boys and girls of all ages. When customers came desiring spirit portraits, a young lady, who acted as cashier, adroitly engaged them in conversation in the waiting-room, and generally contrived to find some indications of the physiognomy of the person whom it was desired to evoke. Then one of the numerous heads was selected, stuck upon a doll dressed up in muslin, and a hazy portrait of a spirit was produced from it. Buguet guarded himself by saying he could never guarantee a likeness, because much depended on the strength of faith of the applicant; and moreover, spirits were very capricious, and sometimes when you called for one another would come; but in very many instances the force of imagination was so strong that his dupes believed they saw the portraits of their relations. They burst into tears, fell upon their knees, kissed the photographs, and were profuse in expressions of gratitude to the pro-

\* *Rex v. Mears*, 1 Bost. Law Rep. 205, reported under the name of *Rex v. Tyler*, in 8 C. & P. 616.

† See to this effect *Rex v. Giles*, L. & C. 502; 10 Cox C. C. 44; *State v. Phipper*, 65 N. C. 321; *Whart. C. L.*, 7th ed., § 2092 a.

fessor as well as lavish of gifts to him. Notwithstanding the palpable exposure of the imposture in open court, a host of respectable witnesses, including a Russian marquis, the Comte de Bullet, Mr. Sullivan, formerly United States minister at Madrid, two French colonels and several ladies appeared for the prisoners, and, undismayed by the sarcasms of the presiding judge, protested that they really had seen unmistakable portraits of deceased relatives. The eminent counsel for the defence, M. Lachaud, spoke for two hours, and alluded to Moses, Isaiah, Tertullian, and other authorities on spirits. The court, however, thought the charge fully proved, and sentenced Buguet and Leymarie to one year's imprisonment, and Firman to six months. It is curious that the prosecution was not instituted on the complaint of any customer, but spontaneously by the police

for reasons not explained." This is good law; and there is no question that a similar conviction would follow prosecutions in the United States, conducted with equal intelligence, against not only the spirit photographers, but all concerned in obtaining money by impostures such as those of Katie King and her abettors.

But this does not touch the case of those who honestly apply what is called spiritualistic force. As to such persons we may hold—1. If in consequence of their action on another, such other person injures himself, they are penally as well as civilly responsible for the injury. 2. If they obtain control over the will of another person, so as to make him their absolute agent, they are both penally and civilly liable as principals for what he does under this constraint.

FRANCIS WHARTON, LL.D.

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