

#14
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MR. ELBRIDGE T. GERRY,

OF COUNSEL FOR THE PEOPLE,

BEFORE JUSTICE DOWLING, ON THE PRELIMINARY
EXAMINATION OF WM. H. MUMLER, CHARGED
WITH OBTAINING MONEY BY PRETENDED
"SPIRIT" PHOTOGRAPHS.

MAY 3d, 1869.

REPORTED BY ANDREW DEVINE.

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ARGUMENT.

MR. GERRY *said* :—

May it please the Court, I have listened with great pleasure to the remarks of the learned counsel for the defence (JOHN D. TOWNSEND, ESQ.) If legal acuteness and professional ability alone, would suffice to extricate his client from the consequences of his crime, they certainly have not been spared in the presentment of his cause; but while I am compelled to admire the subtlety of the argument, I shall endeavor to expose its fallacies.

I should, however, do great injustice to my own feelings, as well as to those of my learned associate, if, before presenting the case in behalf of the People, I omitted to express my gratification at the latitude which your Honor has allowed in its investigation. Whatever may be the result of this protracted hearing, neither the prisoner nor the Public can complain that a fair and impartial hearing has not been allowed him. Whether he be released, or be held to await the action of the grand jury, no one can in truth or justice say that the charges and defence have not been fully investigated. And in these degenerate days, when public opinion is too often invoked to influence or censure the conduct of a magistrate in the discharge of his duty on the Bench, it is gratifying for the People to know that there is at

least one judicial officer whose integrity is above reproach, and whose ability in the investigation of truth is equalled only by his patience in hearing all that can be urged in the cause of justice and right. I will not wrong my learned adversary, who has conducted this case for the defence with his usual skill, by supposing for one moment that he does not heartily concur with me in the view just expressed. It is but a naked truth, certainly not imputable to adulation ; but yet one, the proper application of which to the cause at bar can be best judged of by those who know and feel its force.

This is no private prosecution. One of the gentlemen connected with a public journal of this city—well called the *World*, from the universality of its topics—had his attention called to these so-called “spirit” photographs. Satisfied that a huge swindle was being perpetrated, he brought the matter to the attention of the chief magistrate of this city,* who at once directed his right-hand man, his Chief Marshal, Mr. Tooker, to investigate it personally ; and he did so. I insist, therefore, that any assertion that private malice instigated these charges, is wholly without foundation. I was not surprised at the silly remarks of the prisoner in his statement ; but I certainly was at the criticisms of my learned friend upon the personal appearance of Marshal Tooker and his standing in court, for they were as uncalled for as they were pointless. As to the attack upon the Mayor, his character is too well known to require any apology for his course in the matter, and I can only regret that circumstances have deprived the People of his personal conduct of this investigation.

* Hon. A. OAKLEY HALL.

The prisoner at the bar, William H. Mumler, stands charged by the People (in substance) with the commission of three distinct offenses; two of the grade of *felony*, and one of *misdemeanor*.

First. Upon the complaint of Joseph H. Tooker, with having, in the month of March, 1869 (with the collusion and assistance of one William Guay), designedly and by *false pretenses* defrauded and cheated him out of, and obtained from him the sum of ten dollars, lawful money of the United States of America.*

Second. Upon the further complaint of Joseph H. Tooker (with a concurrent complaint of P. V. Hickey), with having designedly, and with intent to defraud, obtained from said Tooker the sum of ten dollars, by means of gross frauds and cheats which were practiced by the prisoner habitually *upon the public* for the purpose of obtaining, and with the result of obtaining, sums of money from many credulous persons; and that the prisoner was therefore indictable as a cheat at common law, within the meaning of the statute.†

Third. Upon the complaint of Joseph H. Tooker (with concurrent complaints of P. V. Hickey and Oscar G. Mason), with stealing, taking, and carrying away by trick or device the sum aforesaid from said Tooker, and other similar sums from other persons. This brings the case within the statute of *larceny*.‡

* 3 R. S. (5th ed.), p. 956, § 55.

† Laws of 1853, ch. 138, § 2.

‡ 3 R. S. (5th ed.), p. 971, § 1.

Now this case early assumed a phase which, if carefully considered, will materially assist in removing any doubt of the existence of sufficient probable cause to warrant the holding of the prisoner to await the action of the grand jury upon each and all of these charges.

The facts upon which the charge of *false pretences* is based are in substance :

First. A statement made by the prisoner, "that he was a spiritual medium ; that he produced spirit likenesses ; that no other person could take such wonderful pictures ; that the pictures were not the result of a trick or deception ;" coupled with the exhibition of a picture with a faint outline of another form than that of the sitter, and a further assertion by the prisoner, "that he (Tooker) would come to recognize the face as that of some relative or friend."

Second. A previous payment of two dollars by Tooker on the strength of a previous similar statement made by one Guay, who acted as agent for the prisoner ; and a subsequent payment by him of eight dollars on the strength of the prisoner's statement, and on the furnishing of certain photographs purporting to be of spirit forms, and on receiving a printed book containing an additional statement by the prisoner, over his signature, and designed to further induce a belief that the indistinct form on the picture was not produced by mechanical or natural means.

Third. A discovery by Tooker, after parting with his money, that the photographs *were* ordinary photographs, and that all the forms on them *were* produced by mechanical means.

These facts, coupled with the further statements made on oath by the complainants, to the effect that the prisoner was in the common habit of deceiving the *public* by these means, and of extorting money from the credulous by what was in reality only a gross fraud and cheat, amply sustain the complaint as for a *common law cheat*, as I shall presently show. And then, in addition to these facts, it being further stated that the parting with the money was not intentional, in the absence of the subsequent production of a photograph of a spirit by supernatural means, it follows that the taking of money in advance, and retaining it, without giving in return the article it was paid to obtain, was a *larceny of the money by trick and device*; because the intention of the owner was to part with the money only on receiving a certain article, and if that article was not produced, he did not design to part with his money at all.

Now, when the People rested their case in chief, the defence seem to have considered that probable cause had been shown to exist. No motion to discharge on the evidence as it stood, was made, but evidence was at once adduced for the prisoner. And then the prisoner took the remarkable position—always a last resort in a desperate case—that the charges made against him were ostensibly true, that he did obtain money by these so-called “spirit” photographs, but that they were not the result of mechanical artifices or means. Admitting the pretences, admitting the receipt of the money upon the credit of the pretences, and admitting that the pretences were made for the purpose of obtaining the money, he traversed the falsity of the pretences. In other words, he asserts that these so-called spirit forms are produced by means wholly beyond his control, for which he cannot

account, and that those means are unknown, and not human. And then, by way of logical sequence, he insists, as his learned counsel has insisted in his argument, that he is not to be punished, because he has *not* used deceit, or mechanism, or sleight of hand, to produce these so-called spirit pictures.

Now, the Law does not deal with the supernatural, nor recognize it as an element in its dealing with facts. It never attributes to unusual causes, results which may be accounted for by the employment of ordinary means to produce them. And hence, when, as here, an averment is made of the existence of things, knowledge of which cannot be had by means of the exercise of the physical senses, the party making the averment must prove it as made. The *onus*, in other words, rests on him who asserts that unnatural means did produce a natural result. This is the ordinary common law rule applied daily in cases of common occurrence—where, for instance, in actions against common carriers for negligence, the *act of God* is pleaded as a defence. To sustain any such defence the party averring it must prove that an influence or occurrence in nature, beyond the possibility of human influence or control, produced the result in question; and further, that no portion of the result was or could be attributable to human or physical causes or means. The Court of Appeals, in a recent case,* thus drew the distinction:

“By the act of God is meant something which operates without any aid or interference of man. When the loss is occasioned by, or is the result in any degree of *human* aid or interference, the case does not fall within the exception.”

* *Merritt v Earle*, 29 N. Y. R., 115, 117-20.

I call your Honor's attention to the able opinion of Judge Wright in that case, showing the distinction between the act of God and what is known as "inevitable accident."

In all these cases, therefore, where the act of God is pleaded, the party relying on that fact as a defence, must prove it, because the law presumes its non-existence, and hence it is matter of affirmative defence. This rule is not confined to civil cases. Equally wise and stringent is the provision of the criminal law, that the law presumes a man charged with the commission of an offence to be sane until the contrary be proven. This is on the principle that "general sanity is the natural and ordinary condition of the mind, and is to be presumed until the contrary is established," a principle which has long been settled in this State by the Court of last resort. It was decided as far back as the case of *Gardner v. Gardner*,* and reiterated in the case of *The People v. Robinson*,† and in *Sellick's case*.‡ The case of *The People v. McCann*,§ which seemingly held the contrary doctrine, was subsequently overruled in the cases of *Ferris v. The People*,|| and of *Walters v. The People*.¶ And so in numerous reported cases, as where a man laboring under a hallucination hears voices ordering him to commit murder, or sees forms pointing him to the commission of crime—any defence based on the assertion that those forms or voices were real, would be held untenable in law, for the reason that the law does not recognize the possibility of any superior or spiritual

* 22 Wendell, 526

† 1 Parker, Cr. R., 649, affirmed in 2 Id., 235.

‡ 1 City Hall Recorder, 185.

§ 16 N. Y. R., 58.

|| 35 N. Y. R., 125.

¶ 32 N. Y. R., 147.

influences sufficient to justify what it declares to be a felony. So that, for instance, if Mumler to-day were to commit a murder, and were to assert, as a defence, that for a long time past he had been urged by spirits to commit it, and that he believed that a spirit hand held the dagger and guided it as he plunged it into the victim, that would constitute no defence whatever. The only available ground of defence in such a case is, that the moral sense of the prisoner was so paralyzed at the time of the act, by the existence of morbid physical or mental influences, over which he had no control, that he could not have been, and, in fact, was not aware of the heinous nature of the act committed.*

Look now, in this light, at the evidence offered by the prisoner. I insist that it not only fails to sustain the attempted defence, but furnishes ample proof of probable cause, if any more be needed, to warrant his commitment on each and all of the charges.

We need have no uncertainty as to the defence intended to be proved in this case, for the prisoner has stood all along in the position which he voluntarily assumed at the outset. He has put in here a written paper, stating specifically what he means to rely on :

I. That there is no trick, fraud or deception in what are called spirit pictures by the accused.

II. That in order to produce those pictures, nothing more is done or used by him than by ordinary photographers in producing their pictures, than mere resting his hand on the camera.

III. That the spirit pictures coming or abstaining from coming is in no respect subject to his control or volition.

* Whart. & Stillé Med. Jur., §§ 47 to 60; 151 to 158. Ordonaux on Hallucinations, pp. 20, 21.

IV. That the process of taking them has been again and again carefully scrutinized and watched in its every step by men of intelligence and by those skilled in the art of photography, whereby it has been ascertained beyond doubt that there is no deception or fraud about it.

V. That there has been produced on the same plate with the picture of a living person, the picture or ghost-like image of persons who have died, which have been recognized as likenesses of such persons by those who knew them in life.

VI. That this has been done in cases where there was no likeness or picture in existence of such deceased person, and whom the operator had never seen or heard of.

VII. That it is now some twelve or fourteen years since these spirit pictures were first heard of in this country; that within the last four or five years the taking of these pictures has been publicly heard of and known in Boston, and there frequently investigated with the utmost care and scrutiny, and that simultaneously with their production in New York they have been produced in Paris, and in Poughkeepsie, Waterville and Buffalo in this State.

VIII. That in the various attempts to imitate these pictures, and which some photographers claim are the same thing, there are essential points of difference, plainly to be discovered by the practical or the discerning eye, and which distinguish the genuine from the false, and which cannot be produced by the imitator.

IX. That the accused does not know and never has pretended to know by what power or process, other than that of producing an ordinary photograph, these spirit pictures are produced. That he has often solicited and obtained the closest scrutiny by men more capable than himself of understanding the process, and he is now at all times ready and willing to have his work scrutinized and watched in the most critical manner. And to that end he invites an investigation by a delegation of the most expert and experienced photographers in town, and pledges himself to afford the fullest opportunity therefor.

X. That there are a great many intelligent men and women, who, after a careful investigation, are firm believers that the pictures are truly likenesses of the spirits of the departed, and that he and such believers are of opinion that the taking of these pictures is a new feature in photography, yet in its infancy, surely but gradually and slowly progressing to greater perfection in the future, requiring for such perfection time and a scientific knowledge of the power that is operating.

And now the question is, how has this defence been sustained? Their first witness was William P. Slee, the celebrated Poughkeepsie witness, who watched the camera during Mumler's operations, and who believes in spirits—especially, as he says, *ardent* spirits. He only looked into the camera, and he observed that Mumler kept his hand on it while the process was going on, and that he put the cloth over his head before he put the slide in with the plate. This witness believes it was supernatural, simply because he did not see or know how it was done! He proved exhibits Nos. 1 to 9 for the People, two of which are photographs taken for Tooker and Hickey by Mumler, as appears by the printed statement on the back of them, and he admits they can all be done by mechanical means.

Their next witness is Wm. Guay, a partner in the swindle, and, as I shall presently insist, a principal in the felony. He took the money from Tooker. He is a disciple of Andrew Jackson Davis, and believes in his theology "up to the hub." He was authorized by the prisoner to receive the money, and he proves that a great many persons called to have their photographs taken with these "spirit" forms, and paid their money for that purpose. It seems that Mumler did not trust *him* with the knowledge of the trick. Guay himself admits that the ghost might have been produced by means within the camera; but contradicts himself on the cross-examination, and says that he is not certain about it because he has never tried it. And yet he told Tooker it was his belief that those pictures were produced by spiritual agency. He connects Mrs. Mumler with the swindle by showing that she was always present on these occasions;

and he states specifically what his own part in the swindle was—he was allotted by Mumler “to stay on the second floor to carry on the business on systematic rules and principles generally.”

Now observe, that this witness has a pecuniary interest in testifying as he did, because he has not yet received his share of the plunder, or profits, whichever you choose to call them. He is liable to be, and, as I shall insist, ought to be, held for the felony, as well as Mumler; and I shall dismiss him here with the remark, that his testimony tends to sustain the propriety of the old rule of law which excluded the testimony of a witness who was shown to have a pecuniary interest in the case.

But the next witness for the defence is one of a very different character. A gentleman who has adorned the Bench, ever kind and obliging to his juniors at the Bar, and who is, perhaps, second to no one in the city of New York as an able jurist, certainly not surpassed by any as a criminal lawyer—Hon. John W. Edmonds.

I shall consider his testimony on the subject of spirits, in connection with that of Mr. Paul Bremond, hereafter. He went to this gallery of Mumler's on a preconcerted notice. He knew nothing of photography, and as he was already a believer in spiritualism, it is fair to presume that he did not require very strong proof to insure his belief that Mumler's spirit forms were supernatural. Yet even now, your Honor will observe, that, cautious lawyer as he is, he does not commit himself, for he says: “I do not say that they (the spirit forms so-called) are produced by supernatural means.” He never examined the photographic process at all, and does not pretend that he did. He paid ten dollars for the first

and five dollars for the second sitting, and went away satisfied. When called upon, he came here upon the stand as a witness for the defence, and gave his testimony fairly and impartially. I do not suppose that any one for a moment doubts that he really believes, that what he stated here about the appearance of a spirit to him in the court room, did actually occur.

Then comes a photographer, Wm. Gurney. He knew but little about the matter. He saw Mumler have his hand on the camera but could not discover the trick; and although a photographer for twenty-eight years, he could not have known much about the processes of taking ghosts artificially, for he says it is not possible to produce such an object unless it be outside the instrument.

Next comes a strange anomaly, a detective reporter, Mr. Snodgrass—or more correctly, James R. Gilmore, *alias* “Edmund Kirke.” He calls on the prisoner, sees his accomplice Guay, and notifies him in advance what he is about. He is a sharp, shrewd man, not a believer in spirits, and is even now satisfied that there is a “nigger in the fence” somewhere, although he does not know exactly where to put his hand upon him. But his mistake in this case was in giving Mumler warning of what he was going to do; and in this he reminds me of the immortal Snodgrass, who, says Dickens, “in a truly Christian spirit, and in order that he might take no one unawares, announced in a very loud tone that he was going to begin, and proceeded to take off his coat with the utmost deliberation.” Like Mr. Snodgrass on that occasion, this witness was “immediately surrounded and secured,” and the result was that he sat twice, but the

pictures were not distinct. It is evident that Mumler was disconcerted on that occasion. The witness next tried Rockwood, who produced similar "ghosts" in different ways ; and he finally came to the conclusion that although not exactly a "spiritual" process, there was certainly something remarkable about it—an opinion in which undoubtedly we all concur.

Next, by way of variety, comes Elmer Terry, the intelligent oyster dealer of Bleecker St., who "shelled out" five dollars to Mumler for six pictures. He went there expressly to get a picture of the spirit of a deceased friend. He paid his money in advance on the statement that he would be furnished with such a picture, and he paid afterwards when he thought he had it. He recognized the "spirit" of a four year old boy who died twenty years ago, and he recognized the picture of Miss Frances Catlin, whose portrait he had seen only four days before this photograph was taken.

Then comes his friend Jacob Kingsland, who recognized the likeness of Miss Catlin, but could not speak positively of the children. Now I ask, where is Miss Catlin's picture? The defence say the People should have produced it, but I insist that *they* should have produced it. *Their* witness said it was in the possession of his friend, and could be had at a moment's notice. Why then did *they* not show it to your Honor, in order that you might determine by examination and comparison whether in fact the likeness was real or not? And it is to be noted that this is a piece of *comparative* testimony, because the impression of Miss Catlin's features was kept alive in the witness's mind by his having her portrait ready at hand to refresh his memory whenever occasion should prompt.

Then comes Mr. Paul Bremond, a sensitive, courteous old gentleman, although occasionally betrayed into a little vivacity of temper, when provoked by sarcasms or doubts as to his spiritual faith. He is shrewd and sharp enough to invest \$250,000 in Texas railroads, and to make money by the operation; although he concedes he was not incited to do so by "spiritual" suggestions. But he labors under a hallucination as to sounds. He is a firm believer in "spirits," and was so fifteen years ago, when he used to hear the voices. He kindly expressed his pity for my incredulity, and of course he recognized the "ghosts" that Mumler photographed as likenesses of the departed. He particularly recognized "Elizabeth Trapp," and thus fell into the *trap* that was laid for him, and swallowed Mumler whole, "yellow-covered book" and all.

Following up this shrewd investor in Texas railroads, comes a railway contractor, David A. Hopkins, who paid his money and watched the prisoner. He went there to get a "spirit" photograph, and identified one of the "ghosts" as that of a lady deceased, whose portrait a Mr. Stallman has. Why is not that portrait produced?

William W. Silver is the next witness. He is a believer in the supernatural. He says that Mumler closed the slide on every occasion when a spirit appeared. He is the gentleman who sold out to Mumler his entire stock, including his stock of old glasses, and he naturally watched Mumler's process without detecting the trick. No doubt he would like to be received as a partner, like Guay.

Then comes Mrs. Luther C. Reeves, a credulous old

lady, who went with her nephew, Mr. Welling, and the result was a "spirit," which she identified as her son, *by the length of his ears!* If the departed son could only speak, I have no doubt he would have exclaimed, with Mercutio, "I will bite *thee* by the ear for that jest." She made a curious blunder about the spirit of the child with the spinal disease, which "went against the stomach" of the sitter; and the best of the joke is—if such a fraud can be regarded as a joke—that what she thought a *boy*, any person in the possession of his ordinary senses would pronounce to be a *girl!* But the reason of her mistake is obvious. What, with the raps she heard and the "spirits" she saw, she undoubtedly became converted, and cheerfully paid her five without a murmur.

Next we have an artistic view of the case. Samuel R. Fanshawe says he went there and saw Mrs. Mumler, and, like Gilmore, announced in advance that he was a skeptic. He was anxious to exchange pictures with Mumler—to pay him in works of art instead of money. After having notified them in advance that he meant to find out the trick (it is needless to add that he did not), his credulity led him to recognize the ghosts of his mother and son, although they were so indistinct that it was almost impossible to recognize any shade at all.

Then follows Mr. William F. Kidney, a photographer from up the North River, who certainly will never set it on fire, if he does not study more than he has done about light and heat. A man who does not know what a prism is, is certainly more of an expert of ignorance than of photography. Why, he did not even know the color of sunlight, but had a general idea that it was

“red”—which is certainly more than he could say for himself.

Mr. Charles F. Livermore adds another name to the list of the credulous. It took him five sittings to get what he wanted, and he finally succeeded in getting a floral ghost without a spiritual smell. He recognized it as his wife's picture, an accurate portrait of whom he has before him every day in his room. Even he says he does not yet believe in photographing spirits; but, Polonius-like, he sees in the cloud either a whale, or any other shape that the adroit operator claims that it assumes. Three different pictures are produced by him here in evidence, and a comparison will satisfy any person that the three “spirit-forms” are not of the identical person. They are taken in different positions, and even the most powerful microscope will not detect the likeness—showing the credulity of a mind prepared to believe.

The closing witness for the defence is Mrs. Ann F. Ingalls, who recognized in the photograph her mother, son, and brother, all of whom died years ago. She went there, she says, to get a “spirit” photograph, and she certainly got more “spirits” for her money than her fellow-victims.

Now what does all this prove? Why, first, that the trick was so cleverly done that not even photographers could discover *how* it was done. Second, that very many persons of ordinary intellect, competent to conduct the every-day business of life, went to the prisoner, paid their money, received these “spirit” photographs, fancied they recognized likenesses of their departed friends, and therefore believed the prisoner's statement.

Your Honor will note that in cases where persons went there avowing skepticism and their intention to investigate the matter, they had, in nearly every case, to sit more than once ; and the inference is that they grew more careless every time they watched the performance. Those who went prepared to believe, of course did believe on very slight proof. And that is all this evidence of the defence proves. It proves *the existence of a belief* in the prisoner's statements, not *the truth* of those statements. There is no positive proof whatever of any spiritual agency, only evidence that certain persons *believe* it exists. Just as well might my friend undertake to prove that the tricks of Heller, Anderson, Blitz, or Hart, are the work of supernatural agency ; because there are fools who believe them to be so, for the reason that they cannot discover how they are done.

Man is naturally both credulous and superstitious, and in all ages of the world impostors and cheats have taken advantage of this credulous and superstitious nature to impose upon their fellows less sharp in intellect than themselves. Hence it is no wonder, that a man who puts forth such claims and pretenses as the prisoner does in this yellow book (Exhibit No. 10), should find a sufficient number of credulous dupes to make the imposture profitable. Hear what he says :

"My object in placing this little pamphlet before the public, is to give to those who have not heard a few of the incidents and investigations on the advent of this new and beautiful phase of *spiritual manifestations*. It is now some eight years since I commenced to take these remarkable pictures, and thousands, embracing as they do scientific men, photographers, judges, lawyers, doctors, ministers, and in fact all grades of society, can bear testimony to the truthful likeness of their spirit friends they have received through my mediumistic power. What joy to the troubled heart ! What balm to the aching

breast! What peace and comfort to the weary soul! to know that our friends who have passed away can return and give us unmistakable evidence of a life hereafter—that they are with us, and seize with avidity every opportunity to make themselves known; but alas, in many instances, that old door of sectarianism has closed against them, and prevents their entering once more the portals of their loved ones and be identified. But, thank God, the old door is fast going to decay; it begins to squeak on its rusty and time-worn hinges; its panels are penetrated by the worm holes of many ages, through which the bright, effulgent rays of the spiritual sun begin to shine, and in a short time it will totter and tumble to the earth. Boston has been the field of my labors most of the time since I commenced taking these wonderful pictures, where I have been visited by people from all parts of the Union; but at the earnest solicitation of many friends, I have concluded to make a tour through the principal cities of the United States, that all may avail themselves of this opportunity to obtain a likeness of their loved ones. I am often asked, “are there no other mediums for this phase of spiritual manifestations?” I answer, there are a number now, in the United States and Europe, that are taking them with more or less success, and there are hundreds of photographers who have taken what I call an approximation to the spirit form. If they will but look carefully at some of their cards or negatives, they will see a semi-indefinite form. To those who find these forms on their negatives, no matter how vague or indistinct, let me assure you that you are capable of becoming a medium for this beautiful manifestation, if you will but give the proper time and attention to your own development. Let me entreat you to persevere, throw aside all skepticism, sit as often as you can with some good medium for development, and I hope the time is not far distant when I shall have hundreds of co-workers in this beautiful *Spirit Photography*.

Yours, truly,

WM. H. MUMLER.”

Now what is this modern *Spiritualism*, which is here relied on in support of these pretended miracles? The truths of the Christian religion, as asserted in the Bible, have always been acknowledged by the people of this Nation. That religion is the basis of all human law, and constitutes the vital essence of our legal system. It was

for this reason that in our own State, in *The People v. Ruggles*,* the court held, that blasphemy against God, and contumelious reproach and profane ridicule of Christ or the Holy Scriptures, were offences punishable at the common law in this State as public offences. And CHANCELLOR (then Chief Justice) KENT there said "that to revile the religion professed by almost the whole community is an abuse of the right of religious opinion and free discussion secured by the Constitution; and that the Constitution does not secure the same regard to the religion of Mahomet or of the Grand Lama as to that of our Savior, for the plain reason that we are a Christian people, and the morality of the country is deeply engrafted upon Christianity." This same view was reiterated by a unanimous court in *Lindenmuller v. The People*,† where Judge Allen said :

"It would be strange that a People, Christian in doctrine and worship, many of whom, or whose forefathers, had sought these shores for the privilege of worshiping God in simplicity and purity of faith, and who regarded religion as the basis of their civil liberty and the foundation of their rights, should, in their zeal to secure to all the freedom of conscience which they valued so highly, solemnly repudiate and put beyond the pale of the law the religion which was dear to them as life, and dethrone the God who, they openly and avowedly professed to believe, had been their protector and guide as a People. Unless they were hypocrites, which will hardly be charged, they would not have dared, even if their consciences would have suffered them, to do so. * * * It was conceded in the convention of 1821 that the court in

* 8 Johns. R. 291.

† 33 Barb. R. 561.

People v. Ruggles did decide that the Christian religion was the law of the land, in the sense that it was preferred over all other religions, and entitled to the recognition and protection of the temporal courts by the common law of the State; and the decision was commented on with severity by those who regarded it as a violation of the freedom of conscience and equality among religionists secured by the Constitution.* Mr. Root proposed an amendment to obviate that decision, alleged by him to be against the letter and spirit of the Constitution, to the effect that the judiciary should not declare any particular religion to be the law of the land. The decision was vindicated as a just exponent of the Constitution and the relation of the Christian religion to the State; and the amendment was opposed by Chancellor Kent, Daniel D. Tompkins, Colonel Young, Mr. Van Buren, Rufus King, and Chief Justice Spencer, and rejected by a large majority, and the former provisions retained, *with the judicial construction in People v. Ruggles fully recognized.*"

Now this theory of Spiritualism, when carefully examined, is only an old form of infidelity in a new dress. Its idea of Deity is old heathen pantheism—the doctrine that God is absorbed in Nature, and that the Universe and God are identical. It is directly antagonistic to the Christian religion. Let me say here that I do not wish to misrepresent or misconstrue the doctrines of Spiritualism, and that I rely for the accuracy of my statements upon a volume which purports to be written and published by Andrew Jackson Davis, the teacher of

* N. Y. State Conv. of 1821, 462, 574.

this "improvement" on Christianity, and which is entitled, "*The Present Age and Inner Life; Ancient and Modern Spiritual Mysteries classified and explained.*" The publishers, in the preface, say: "We take pleasure in offering this volume as a compend of the harmonial philosophy of spiritualism. * * * Of all the author's works this is, without doubt, the most complete, being most thoroughly devoted to a consideration and elucidation of the facts and principles of spiritualism."

This Spiritualism consists, first of all, in a denial of the authenticity of the Holy Scriptures. On page 74 of his book, Mr. Davis says: "I am fully impressed with the historic fact, well known to the ecclesiastical antiquary, that the present books of the Bible were brought together under very suspicious circumstances." And he goes on to say: "All this throws a mantle of doubt over the alleged verity of the supernatural accounts of the Bible."

But I am not going to waste time upon this. Professor Greenleaf, before he went to his eternal rest, after having produced the treatise on *Evidence* which made him a standard author in our jurisprudence, left a rich legacy to the world in his work on the *Testimony of the Four Evangelists*, in which he shows conclusively that the authenticity of the Scriptures can be proven beyond a doubt by the application of the ordinary rules of evidence which obtain every day in our courts of common law.

Spiritualism, again, denies the faith of Christ crucified, and the efficacy of the Atonement, for under its system there is no need of a Redeemer. This is clearly proven on page 60 of this infamous book (*Spiritual Mys-*

teries Unveiled), and again on page 31, where the author says: "It is also said that the Testaments contain all the wisdom, all the light necessary for man. But time, bringing with it the combined and conspiring testimony of departed and retiring generations, has demonstrated this assertion to be a fallacy."

He then goes on to sneer at the "moral perceptions," to which, he says, the Savior directed his teachings.

Spiritualism also denies the doctrine of a general resurrection and of a final judgment to come.* After denying the Divinity of Him who is the Resurrection and the Life, this naturally follows. It asserts that the resurrection takes place at the instant of his death; thus fulfilling the words of St. Paul, of those who say that "the resurrection is past already, and overthrow the faith of some."†

And what does Spiritualism offer its votaries by way of a Heaven—what substitute for that beatific hereafter which the Christian sees with the eye of faith? Why a "*summer land*"—a land of spiritual trees and spiritual brooks, and ghostly sunshine, and ghostly shade, a nice sort of a place for spiritual pic-nics! I have not the slightest doubt that if the accident which happened to Hull, when he forgot accidentally to wipe out a photograph of High Bridge before he again used the plate, had occurred to Mumler, he would have found persons credulous enough to believe and swear that it was a spiritual photograph of the "Summer Land." Mahomet peopled his Paradise with *houris*, for the reason that those he wished to convert were *men*; and the Mahometan Paradise never was an attractive

* *Spiritual Mysteries Unveiled*, p. 24.

† 2 Tim. 2, v. 18.

place for women, because there were too many of their own sex there. But Spiritualism seeks to convert women as well as men, and therefore it puts forth this idea of a beautiful "Summer Land,"—formed according to the idea of the great seer, Mr. Davis, by a sort of *quasi* perspiration of the earth and the other different worlds in the universe, and a conglomeration of the atoms thus thrown off! *

Our law interferes with and constrains no man in the exercise of his religious belief; but it does restrain men of every opinion and creed from acts which interfere with Christian worship or which tend to revile religion and bring it into contempt. The law places the Bible in the hands of every convict in our state prisons,† and it punishes the use of profane or blasphemous language as a misdemeanor.‡ And the law does not recognize any individual belief, as an excuse for infringing its provisions made for the safety of the whole community. It does not exempt the Mormon who chooses to marry two wives in this State, from punishment for bigamy because he is a Mormon. Nor on the other hand, if any persons, believing in human sacrifices as a part of their religion, should attempt to sacrifice human life in that way, would they be excluded from punishment for murder, upon the ground that their religious belief justified or required the act. When, therefore, as here, a man is shown to have obtained the money or property of others by means which the law proscribes as criminal, it does not permit him to plead

* See *Spiritual Mysteries Unveiled*, page 413-4.

† 3 Rev. St. (5 ed.) p. 1077.

‡ *People v. Ruggles*, 8 Johns. 291; 2 R. S. (5 ed.) 933, 937.

as an excuse his religious views or belief, except so far as such a plea amounts to that of insanity.

The fundamental error of spiritualism consists in regarding the mind of man as infinite,* whereas it is only finite. The range of human thought is limited by physical agents and conditions. Let a man of greatest intellect be stricken down by brain fever, and see where is his boasted power to control his mind or direct it in any channel of thought. Prostrate a man upon a bed of sickness, and what becomes of his "lofty exercise" of mental power? Is it not absurd in this nineteenth century to talk of the absolute power of man's brain or thought, when it is so checked, limited, and controlled by physical causes wholly beyond his control?

Man, as originally created, and before the fall, was an immortal being, with a mind untrammelled by physical causes or influences. His own sin and folly subjected him thereafter to physical influences, which before had no control over him. The culmination of those physical influences was death to his physical existence. The scheme of the Redemption alone could, by the laws of Eternal Justice, rescue his soul—his immortal part—from eternal perdition, the just punishment for his offence. Modern spiritualists wholly repudiate the doctrine of original sin, although they illustrate it every day of their lives. They must repudiate it, because it destroys their theory *in toto*; and therefore they are driven to the old pantheistic theory, which they offer as an *improvement* on the Christian religion! My learned adversary fell into an error when he said there were but ten millions of Christians. Why, Davis, in his own book concedes there are not less than three hundred and

* Spiritual Mysteries, p. 40.

ninety-three millions of Christians in the world,* and this is far below the real truth.

Where is the argument to support this Spiritualism? Let us look at it for a moment, for it will not bear investigation, but will explode and vanish in the light which the law throws upon it.

The counsel insists that because we have not produced likenesses of deceased persons made by mechanical means, we have not met the line of argument for the defence; and to show that the claims of his client may be well founded, he cites the cases of Moses and Elias appearing on the Mount, and says that the law which governed them as to the reflection of light may apply here. He does this to account for the damaging fact, proven here again and again, that in many of these "spirit photographs" *the sitter and the "spirits" are in different lights*. Now if any one will refer to that passage of Scripture,† he will find nothing there about Moses or Elias shining at all. The statement is simply: "And there appeared unto them Moses and Elias *talking* with him."

Equally unfortunate is his allusion to the case of Balaam's ass, for he seems to concede that an *ass* would be more likely than an ordinary man to perceive a spirit, and I concur with him in this view. This present case proves there are more asses existing at the present day than there were in the days of Balaam.

Again, the learned counsel, speaking of the witch of Endor, says, "this is the precise thing done then, and done to day, and done everywhere." Now the whole fallacy here, consists in looking at the English

* Spiritual Mysteries, note on page 25.

† St. Matt. 17, verse 3.

translation of the Scriptures as if it were the original. Man, as I have shown, is controlled in the exercise of his intellect by physical causes. His physical nature being finite, the language in which he seeks to convey his ideas is also finite. There are very many ideas incapable of being conveyed at all, through the medium of language. And again, there are very many things which the human mind is incapable of comprehending at all. The mind, in other words, which is more or less influenced by the physical condition of the man at the time, is as finite as his physical condition is; and every known human language differs from the others, in the range and extent of its vocabulary and its ability to present ideas in words. The English language, for instance, is vastly inferior to the German in the mode of coining a word to express a thought: and both the English and German are altogether inferior to the Italian, in conveying musical sounds. And it is because of these differences in languages, because of their innate incompetency to convey the real impression, that persons who read the Bible ordinarily, without either believing in its inspiration or seeking the aid of the Holy Spirit in its perusal, wrest the words of Holy Scripture to their own destruction. For instance, an examination of the passages in the Old Testament referred to by the learned counsel, to prove the appearance of spirits on earth, will show that in every one of them the word used in the Hebrew signifies "messenger"—not necessarily an angelic messenger, but a "messenger:" or else that it is a statement of the appearance of the Almighty Himself, as in the case of the ANGEL appearing to Hagar where the word is JEHOVAH in the Hebrew.

Strange indeed it is, that these Spiritualists first deny the truth of Holy Writ, and then refer to its evidence of past events to support their theories. They have a precedent for this course in the Enemy of mankind, who, centuries ago, both quoted and perverted Scripture in his arguments with the Saviour. And the illustration has its force when we reflect, how those arguments melted like wax before the Divine Logic of the Great Exemplar!

Now let us take the cases which are cited by the defence from the New Testament. Here again we find that the word *angel* in the original Greek means *messenger*. That is exactly what it means in the case which he cites (Acts, iv. 9-11). The words used are "Two men"—that is to say, forms having the appearance of men. But where, I ask, in the Old Testament, in the passages he has cited (with the exception of the case of Saul and Samuel), is there any evidence that the angels or spirits which appeared *were the spirits of departed persons*—shades of those who had lived on this earth? Now, as to the case of Saul and Samuel, I concede frankly and openly, and I do so advisedly, that the Bible unquestionably does assert the appearance of supernatural beings to man. GOD in His wisdom has given us a book, containing a perfect record of all the visible and audible appearances to man of Himself and of those authorized to appear for Him. He has there chronicled the occasions, in which in the past, at sundry times and in divers manners, He spake to our fathers. He has sealed that record with a fearful denunciation against any who shall dare to add to, or detract from it; and I pray in all charity, that none of these spiritualists who attempt to assail the doctrines of Scripture, will ever bring them-

selves within the scope of that fearful denunciation which closes the book of Revelations.

But I turn again to the consideration of the evidence of two of the witnesses for the defence, Judge Edmonds and Paul Bremond. Their extraordinary testimony, as to what they saw and heard, can be accounted for only as statements of hallucinations; in other words, that what each described was "a false creation, proceeding from the heat oppressed brain." Let me not be misunderstood. I do not assert that they are insane. They are not the only men of intelligence who have been afflicted in this way with mental delusions. Ben Jonson saw Tartars, Turks, and Roman Catholics fight around his arm chair.* Lord Castlereigh saw the figure of a beautiful child surrounded by a halo, shortly before he committed suicide† Byron was visited by a spectre which he knew and admitted was owing to over excitement of his brain.‡ Cellini, when imprisoned, had a beatific vision, and saw both the Savior and the Virgin.§ Cowper heard a voice from Heaven ordering him to commit suicide, and he actually did attempt it with a pen knife, but was detected in time.|| Still more remarkable was the case of the great German author Goethe, who could at will produce spiritual flowers and phantasms in his imagination.¶

But of all these, De Boismont well remarks: "These kinds of hallucinations may be produced at will, either physically or intellectually. They sometimes appear without any obvious signs of disordered organization,

* De Boismont, page 59.

† Winslow on Suicide, p. 242; De Boismont, p. 66.

‡ Ibid p. 123.

§ De Boismont p. 69.

|| Bucknill and Tuke on Insanity, p. 144.

¶ Winslow on the Mind and Brain, 463, note.

but they also frequently arise from a derangement of the nervous and circulating systems. Some of these hallucinations establish the transition from reason to insanity."

Even Andrew Jackson Davis himself admits that these spiritual manifestations are sometimes the secondary cause of insanity.* He addresses a chapter *to the insane* on the subject. He had far better have dedicated the whole book to them. They are undoubtedly more competent to appreciate its contents, than any other persons.

I do not assail nor ridicule the belief of any, that the spirits of the departed still hover around the living. But when, as here, it is gravely asserted as an existing fact that such spirits do manifest themselves visibly and audibly to the living, I insist that something more, than visions seen and voices heard by only single individuals at the time, must be proven to show that such visions and voices are not, what medical science has demonstrated them to be, the phantasma of day dreams—the "rooted fancy" of "mind diseased." De Boismont adds: "The continuance of hallucinations, although their character be understood, may occasion the saddest results, even *death* itself!"

"The LAW is LIGHT." And this case, when viewed in the light thrown on it by the evidence for the People in rebuttal, not only explodes the whole theory of the defence, but fully sustains the charges against the prisoner. *Nine* methods have been shown by competent experts, whose evidence remains unshaken by the most searching cross-examination, each of which meth-

* Spiritual Mysteries, p. 373.

ods will produce by mechanical means, what Mumler says can only result from a supernatural process or power. Mr. Hull has testified to *seven* distinct methods, as follows :

1. The process by a positive in the slide. A glass plate containing a previously prepared positive is placed in the plate-holder, in front of the sensitive plate, so that the image on the glass will be taken with that of the sitter at the same time. The distance between the plates varies the size and distinctness of the form.

2. A figure clothed in white can be introduced for a moment behind the sitter, and then be withdrawn before the sitting is over, leaving a shadowy image on the plate. This is known as "Sir David Brewster's ghost."

3. A microscopic picture of the spirit form can be inserted in the camera box, alongside of the lens, in one of the screw-holes ; and by a small magnifying lens its image can be thrown on the sensitive plate, with that of the sitter.

4. A glass with the spirit image can be placed behind the sensitive plate after the sitting is completed ; and by a feeble light the image can be impressed on the plate with that of the sitter.

5. The nitrate of silver bath could have a glass side, and the image be impressed by a secret light, while apparently the glass plate was only being coated with the sensitive film.

6. The "spirit" form can be printed first on the negative, and then the figure of the living sitter added by a second printing ; or it can be printed on the paper, and the sitter's portrait printed over it.

7. A sensitive plate can be prepared by what is known as the dry process, the spirit form impressed on it, and then, at a subsequent time, the portrait of the living sitter can be taken on this same plate, so that the two will be developed together. This result Mr. Hull had several times obtained by accident, having used one of these dry sensitive plates for a landscape, and forgotten to develop it, and then used it again, and found the two landscapes curiously intermingled.

Mr. Mason adds *two* other methods, making nine in all.

8. By first taking a negative of a ghost, and then taking a positive from the negative. If the camera be used only for the negative, the ghost is "*stopped out.*" This is done by exposure for an instant before developing.

9. By the mica positive, inserted in a match and placed in the shield during exposure in the camera. This mica can be removed and concealed in the hand, and is probably the process used by Mumler when defying detection.

Now, if the Court please, each and all of the exhibits offered in evidence by the defence, are explainable by one or another of these nine processes. Exhibits Nos. 1 and 2 produced by Judge Edmonds (the "ghost" in the first of which bears a remarkable likeness to Lady Washington), Mr. Hull says could be printed subsequently; and I beg your Honor to compare it with No. 21 for the People, which Mr. Bogardus produced.

No. 3 is a picture of Livermore and his supposed wife, with a spiritual bouquet, produced by Mr. Gurney. Mr. Hull says this can be done by the dry plate process. Mr. Mason has produced similar pictures by the stopping out process, and a comparison will fail to show an essential difference in the appearance upon the plate.

No. 4 is a picture of a medium, writing, with a "spirit hand," so-called, guiding him, and a "spirit" child. It was produced in evidence by Wm. Gurney. Mr. Hull says that this may be done by the positive in the slide, the first of the nine processes already enumerated. The left "ghost" could be done by second printing, and could be taken on the negative by being placed in the slide, or printed in the dark room.

No. 5 is a photograph of James R. Gilmore, amateur detective and reporter, and was produced in evidence by him. The "ghost" is very indistinct; and Mr. Hull says it may be produced by process No. 1, the positive in the slide. So also in regard to the photograph by Rockwood, No. 6, with a "ghost" from an engraving. Mr. Gilmore produced it here. Mr. Hull says that it can be done by process No. 1. And so of the photograph by Rockwood of James R. Gilmore, No. 7, with Rockwood as ghost. This may be done by Sir David Brewster's process, and Mr. Hull says it may be done by the positive in the slide.

Their Exhibit No. 9 is precisely the same as this last, except that the ghost is very indistinct.

No. 10, a photograph by Rockwood of Mr. Gilmore, produced in evidence by the latter, is done by exposure to the light with positive plate after the negative of the sitter is taken, and Mr. Hull says it may be done by process No. 1.

Nos. 11 and 12 are photographs of Elmer Terry, one with the "ghost" of a little *girl* (which he says is a *boy*), and the other with the "ghost" of Miss Catlin. These were evidently printed subsequently, because the figure of the "ghost" appears *over* the sitter, and by comparing it with No. 1 for the defence, and No. 20 for the People, they will be seen to be almost identical in character.

Exhibit No. 13 for the defence is a photograph of a lady friend of Paul Bremond, Elizabeth Trapp. Mr. Hull says this may be done by the positive in the slide, or by a microscopic lens in the camera. Mr. Bogardus says it was evidently copied from some old picture. Mr. Boyle says that the ghost could not have been produced by any form in front of the camera at the same time as the sitter, because the lights are different; and Mr. Fredericks gives the same opinion.

No. 14 is a photograph of Paul Bremond, with what is called the ghost of his daughter. Mr. Hull says this may be done by positive in the slide, or that it might be done by a microscopic lens in the camera, or by the dry-plate process. He says that the "ghost" must have been on the plate in front of the negative. Mr. Boyle says of this what he said of No. 13.

No. 15 is a photograph of David A. Hopkins, railroad car contractor, with what is evidently the "ghost" of a girl, though Hopkins says it is a boy. Observe that in this picture the "ghost" projects *over the sitter*, and must, therefore, have been done by subsequent printing, the same as No. 1 for the defence. I ask your Honor to compare this with No. 20 for the People, produced by Mr. Bogardus.

No. 16 is a photograph of Charles Welling, nephew

of Mrs. Luther C. Reeves, with the "ghost" of her son, which she identifies by the length of his ears, and which certainly looks more like a girl than a boy. Mr. Hull says this may be done by process No. 1, the positive in the slide.

No. 17 is the photograph of an old man, also produced by Mrs. Luther C. Reeves, with two ghosts, one of which "goes against his stomach." Mrs. Reeves says it is the ghost of her boy, who suffered from spinal derangement; although he was not so afflicted at the age at which he appears in the picture. The picture, however, is really that of a girl. Mr. Hull says this could be done by second printing, and it could also be done by using a positive.

No. 18 is the photograph of Samuel R. Fanshawe, the artist, with the "ghost" of his mother. The figure of Mr. Fanshawe in this and in No. 19 (which is a photograph of Mr. Fanshawe, with the "ghost" of his son, who died in the war, at the age of twenty-four), is *under* the "ghost," and therefore these two exhibits come within the explanation of No. 20, which is a photograph of Charles F. Livermore, with the "ghost" of his wife pointing upwards. Mr. Bogardus says, that this picture could just as well have been made with the arm of the ghost around the sitter; and Mr. Mason says, that the "spirit" form could not have been in front of the camera at the same time with the sitter. Mr. Boyle says, that he also is positive that the "spirit" was not in front of the camera at the same time as the sitter; and Mr. Fredericks is of the same opinion. And they not merely express this opinion, but they give a reason which accounts for it, although it is not accounted for on any theory of the defence. The reason is *that*

the lights are different. There could have been no duplicate light at the same time, unless one of the lights was invisible ; and these witnesses all testify that the lights on these two pictures were unquestionably from different directions.

So, in photograph No. 21, where the "ghost" holds a crown behind Mr. Livermore's head. Mr. Hull says that the "ghost" in this case could not have been in front of the camera, for it would have obscured the picture generally. Mr. Mason says these figures could not have been in front of the camera when the picture was made, because all objects in front must have their lights similar ; while here, the shadow on the ghost is on one side, and that of Livermore is on the other. Hence it is not one picture, but must have been made at different times and by mechanical means. Mr. Bogardus says this is a "transparent lie," for the same reason. He well characterizes it. Mr. Fredericks is of the same opinion.

Nos. 22 and 24 are photographs of Mrs. Ingalls, with the "ghost" of her son. Mr. Mason says that in No. 24 the "ghost" might have been inside the camera, but could not have been taken in front ; and Mr. Boyle and Mr. Fredericks concur in the same view.

No. 23 is a photograph of Mrs. Ingalls, with the "ghosts" of her mother, and brother, and two children, very indistinct. This falls within the explanation of Exhibit No. 20 for the defence.

Now, I insist that it is idle to say, that the People must show which of these tricks Mumler did use. They have shown *nine* processes or methods, each capable of producing similar results to those produced by him, and they are not bound to say which one of those methods he used. As well might an indicted forger claim, that

to convict him, the People must prove with which particular pen the forgery was committed. Indeed, the real truth is, that Mumler used whichever process was least capable of detection. When watched very closely he was often unsuccessful, and his best pictures were produced where time was allowed him to print, because then detection was impossible. And our view is, that these different results were produced by his being compelled at times to resort to the mica process, or the microscopic process, or some one of those processes requiring sleight of hand—the difference arising when he came to print off the pictures. Where is the evidence that any one watched him *print* the pictures? They were all shown the plates, but there is not a witness produced here who saw him *print* the pictures. It is very true that in his “yellow book” he showed some modes of doing the trick, but is that remarkable? Do not Heller, and Anderson, and other magicians of note, publish books explaining certain ways in which some of their tricks can be performed? But do they not always add that these are not *their* ways of doing the tricks? Now what was the object of publishing this book? Why plainly, to distract attention from the real character of Mumler’s operations; and to direct it to other points connected with the subject, so as to keep the real way of doing the trick undiscovered.

The People have further shown in rebuttal, not only that Mumler’s pictures may be produced by mechanical means; but that when so produced, persons of ordinary and even extraordinary intelligence were unable to detect the trick. Charles Reiss and Doctor Fry, of Bellevue Hospital, watched Mason in vain. The second time that Fry watched, he found out something, but did not

at first. P. T. Barnum—the immortal Barnum—who has been all his life engaged in amusing and interesting the American people by showing them humbugs, but, as he says, giving them their money's worth every time, even *he*, with all his native shrewdness (and he knew of this business seven years ago), tried in vain to detect Mr. Bogardus. But he detected Mumler years ago, and put his “spirit” pictures in the museum, and labeled them what they were, “bogus spirit photographs.”

The People have further and finally shown, that a camera may be constructed, as John Jones testifies, capable of producing “ghosts” by artificial means, which would deceive any photographer, unless he took it to pieces.

And it is perfectly idle to say on behalf of the defence, now, when no seizure has been made, that the People should have seized Mumler's apparatus, and proved the fraud, if there was one. And it is especially idle to say, that this should have been done after the arrest was made, and when it was very easy to remove any evidences of the crime. Why, has your Honor ever gone from the bright sunlight into the “dark room” of a photographic gallery, where the eye is so instantaneously contracted that for the first two or three moments you cannot see anything? And with that experience, have you any doubt that any attempt to detect the deception in this case by such means would be a failure? And as to the means used to deceive the credulous, how easy it would be to have a plate of glass movable with a spring, by which to throw a ray of light at the right time, so as to produce some of these results. It would not be very difficult for an ingenious man to devise means of producing results which would al-

most defy detection; and I think the language of Shakespeare in his play of Henry IV.* may be applied with singular appropriateness here, substituting only the names of the characters in this case for those which Shakespeare uses :

Mumler.—"I can call spirits from the vasty deep.

Hull, Mason, and others, in chorus.—"Why so can I; or any other man.

"But will they come, when you do call for them ?

Mumler.—"Why I can teach you, cousin, to command the Devil.

Mason.—"And I can teach thee, coz, to shame the Devil,

"By telling truth; tell truth and shame the Devil.

"If thou have power to raise him, bring him hither,

"And I'll be sworn, I have power to shame him hence.

"O, while you live, tell truth and *shame* the Devil."

And Mumler might well say of any of his witnesses :

"He suspects none, on whose foolish honesty
My practices ride easy :—I see the business."

Now, the People submit, that upon the whole evidence in the case, there is probable cause to warrant the commitment of the prisoner Mumler, of his wife, and of Wm. Guay, to await the action of the Grand Jury. It is very true that no specific complaint in writing has as yet been made against either Mrs. Mumler or Guay; but your Honor is too familiar with your power as a magistrate sitting in first instance, not to know that where, in the course of a legal examination before you, it appears that a person charged with one offence has been guilty of another of the grade of felony, or that other persons not before you have been guilty of a felony, you have

* Part 1, act 3, scene 2.

the power, at your own instance, to arrest them and hold them to await the action of the Grand Jury.

And upon the charge of FALSE PRETENCES the People urge this.

At common law, where one, by artifice or fraud, obtained money or property from another, this did not in every case constitute an indictable offence, for the reason that in many instances a civil suit lay. Thus, a mere lie was not indictable at common law, even if money was obtained on the strength of it. An artful contrivance had to be proven to sustain a conviction.* The reason was obvious. The Law presumed both parties equally intelligent, and a naked assertion acted on, showed only want of ordinary caution in the party wronged.

In order to reach this evil, in cases of private fraud which did not come under the head of cheats (for reasons which will be subsequently shown), a series of statutes were passed, which form the basis of our own. The first was in 1542, and made the obtaining of money from another, by color and means of a false token, indictable.† The next followed in 1757, and is the statute on which our own is based. It enacted that all persons who should obtain money from others by false pretences, with intent to cheat and defraud such persons, shall be deemed offenders against the Public Peace. And it was passed, as Lord Denman said, “to protect the weaker part of mankind.”‡ In other words (as will be con-

* 1 Hawkins P. C. ch. 71, § 2; 1 Bishop Cr. L. § 1016, and cases cited in note; 2 East P. C. 818; Rex v. Jones, 2 Ld. Raym. 1013.

† Stat. 33 Henry VIII. cap. 1; 2 Bishop Cr. L. § 142.

‡ Stat. 30 Geo. II. cap. 24; Regina v. Wickham, 10 Ad. & El. 34, per Denman, Ch. J.

sidered more fully hereafter), "the common law extended to cheats effected by means of any false token, having the semblance of public authority, or in any manner touching the public interest. * * * The statute 33 Hen. VIII. cap. 1, extended the common law rule, but still required some false token to be used. But this being found too limited to prevent the evil intended, the statute of Geo. II. was passed, which adopted the more general terms of *false pretences*, and which has been considered, in *England*, as extending to every case where a party has obtained money or goods by falsely representing himself to be in a situation in which he was not, or by falsely representing any occurrence that had not happened, to which persons of ordinary caution might give credit. * * * If the false pretence created the credit, it has been considered as bringing the case within the statute." *

Our statute provides "that every person who, with intent to cheat or defraud another, shall, designedly, by color of any false token or writing, or by any other false pretence, obtain the signature of any person, or any money, personal property, or valuable thing, shall, upon conviction, &c." †

Now, to constitute the offence under this statute, three things are essential. *First*. A false representation of an existing fact; *second*, a reliance on that representation as untrue; and *lastly*, the payment of money upon the strength of that representation,—the payment of the money being the gist of the offence. ‡ There must

* McGahay v. Williams, 12 Johns. R. 292-3, per Thompson, Ch. J.; People v. Haynes, 11 Wend. 557; S. C. 14 Id. 546.

† 3 R. S. (5 ed.) p. 956, § 55.

‡ People v. Tomkins, 1 Parker Cr. R. 224.

also exist an intent to cheat and defraud some person, and for that purpose some false pretence must be designedly used, and the fraud must be accomplished by means of the false pretence. Or, if not wholly by that means, it must have had so material an effect upon the mind of the party defrauded, that without it he would not have parted with the money. *

Now, apply these rules to the present case.

First. As to the prisoner. He owned the establishment, and hired Guay to conduct the money-receiving part of the business. If Guay was innocent in the matter, he was Mumler's agent for making the false statements and receiving the money thereon. Where a man in Ohio employed an innocent agent here, to receive money on false representations and a false token, the innocent agent was excused, but the principal was convicted and the conviction was sustained.† Mumler concurred in Guay's and Mrs. Mumler's statements, for Exhibit 10 shows he authorized them. And hence, if the statements were false, and he knew it, the rule applies to him, that a party who has concurred and assisted in the fraud, may be convicted as a principal, even though not present at the time of making the pretence and obtaining the money.‡

The pretences on which he obtained money from Tooker, the payment by the latter on the strength thereof, and the fact of the falsity, have already been shown at the outset of the case. And whether Tooker

* *People v. Crissie*, 4 Denio, 527, per Jewett, J.

† *Adams v. The People*, 1 Comst. 173, overruling S. C., 3 Denio, 190.

‡ *Regina v. Moreland*, 2 Moody Cr. Cas. 276; *Commonw. v. Hardy*, 7 Mete. (Mass.) R. 462; *Cowen v. The People*, 14 Illinois R. 348; 2 Whart. Cr. L. § 2114.

did or did not lay a plan to entrap him, makes no difference in Mumler's culpability.*

The falsity of the statement "that he was a spiritual medium, and produced spirit likenesses, which no other person could take," clearly appears. So the further statement that "such pictures were not the result of a trick or deception," is shown to have been false. Coupled with the exhibition of one of these pictures there was the direct assertion "that [on having his picture taken, &c.] he, Tooker, would come to recognize the face [of the spirit] as that of some relative or friend [not present, but] nearest in sympathy with him." In other words, besides the false assertion of the existing fact that Mumler had produced these photographs by supernatural means, there was an inducement further held out at the time, of an act to be done *in futuro*, which never was done, nor was then intended to be done.

The rule of law is, that where a false statement is made as to the *status* of the prisoner at the time, calculated to induce the confidence which led to the prosecutor parting with the money; this brings the case within the statute, even though such statement be mixed up with false pretences as to the prisoner's future conduct.†

A strong case in illustration of this was that of Maria Giles,‡ otherwise called the "cunning woman," tried in 1865, in England, and convicted. She falsely pretended that she had power to bring back the husband of a Mrs.

* Regina v. Ady, 7 Car. & P. 140, in point.

† Regina v. Bates, 3 Cox Cr. Cas. 201.

‡ Leigh & Cave Cr. Cas. 502, 509, 510; S. C. 10 Cox Cr. Cas. 44.

Fisher, who had deserted her, and said that she could bring him back "over fences hedges, and ditches," and would do so, provided Mrs. Fisher would pay her a shilling, which Mrs. Fisher did. It is needless to add, that after the shilling was obtained, Mrs. Fisher did not get back her husband—at least by that means. Then she discovered that she had been deceived and defrauded, and she had the "cunning woman" indicted. The counsel for the prisoner insisted that the conviction should be reversed (for the woman was convicted on the spot), upon the ground that "there was no evidence that the prisoner knew her statement to be false. The belief in supernatural power has prevailed and still prevails to a wide extent." To this Justice Blackburn replied: "She says what is untrue, and there is nothing to show that she believed it to be true. If people of this sort make money by the pretended exercise of supernatural power, the jury may well presume that they know their pretensions to be unfounded." Chief Justice Earle, affirming the conviction, said: "The material part of the false pretence is, that the prisoner had power, which must be understood to mean supernatural power, to bring back the prosecutrix's husband. That is a sufficient false pretence, within the meaning of the statute." This shows that the courts enforce the proposition of law I have here submitted, that the Law does not credit the use of supernatural agencies, nor attribute to them results which may be produced by ordinary means.

So as to an article sold. Here it purported to be a photograph of both a living and a deceased person. The case is similar to that where tobacco was sold by the barrel, and on delivery proved only part tobacco—

tobacco on the top, and other leaves at the bottom ; and it was held to be a case of pretences.*

So a statement that the prisoner had bought certain skins, and *would* sell them to the prosecutor, held a sufficient false pretence,† on proof that he had not bought them. And in Fry's case, where the prisoner stated that he kept a shop, and that if a certain woman would pay him so much money, she *might* live with him. It turned out that he did not keep a shop at all, and it was held to be a case of false pretences.‡

So again, in Jennison's case,§ where a married man represented that he was a single man, and agreed that if a certain woman would give him so much money, he would marry her. She did so, and it was held that it was a case of false pretences, although the money was obtained upon the representation of what he *would* do ; as it was upon the basis of the existing fact that he was a married man, when he represented himself to be a single one.

Now, the plates shown, the yellow book, and the printed pictures, all constituted *false tokens*, apart from any oral communications. And the prisoner, in Tooker's case, as well as in every other, *himself produced all these tokens*.

Second. As to Mrs. Mumler. She was present when Tooker had his portrait taken, and left as soon as he paid his first advance. Her participation generally in

* Kerrigan's Case, Leigh & Cave C. C. 383.

† West's Case, Dears & Bell, 575.

‡ Fry's Case, Id. 449 ; S. C. 7 Cox Cr. Cas. 394 ; S. C. 4 Jurist N. S. 266 ; S. C. 27 Law Jour. Mag. Cas. 68 ; S. C. Dears & Bell C. C. 449. See also Young's Case, 3 Term R. 98, which compare with Commonwealth v. Drew, 19 Pick. 179.

§ Leigh & C. 157 ; S. C. 9 Cox Cr. Cas. 158.

the cheat will be considered more fully in a subsequent branch of the argument.

Third. As to Wm. Guay. He was the prisoner's partner, interested in the profits, made some of the false statements, and received the money of Tooker. Now, in Young's case,* it was distinctly held that where several parties act a different part in obtaining money by false pretences, no matter who speaks the words, all are guilty of the imposition jointly. The same rule was again asserted in Kerrigan's case,†—that the moment a previous connection between two of them is proven, the act of the one is the act of the other. Bear in mind, Guay was to have half the proceeds. Now, one of the essential elements of the offence of false pretences consists in obtaining the money. Unless money be obtained, the offence is nothing but a mere lie.‡ And Guay swears expressly he took the money by Mumler's orders. This makes even a stronger case than is necessary to charge both.§

The SECOND offence charged against the prisoner and his confederates is CHEATING. At common law, where one, by means of a false *symbol or token*, fraudulently obtained the property of another, such fraud and artifice being one which affected or might affect *the public*, and against which common prudence could not guard, he was punishable as a *cheat*. The offence differed from that of false pretences, first, in that no verbal statement was required; second, the fraud must be of a general,

* 3 Term R. 98.

† 9 Cox Cr. Cas. 445.

‡ Commonw. v. Van Tuyl, 1 Metcalf (Ky.) R. 1.

§ Commonw. v. Harley, 7 Metc. (Mass.) R. 642.

not a private, nature, affecting not only the individual, but the Public ; and, third, such fraud must be one not discernable by the exercise of common prudence.* In the case of Sully, the Court said : “ A cheat or fraud, to be a criminal offence at common law, must be such a fraud as affects *the Public*, and against which common prudence cannot guard, and must indicate a general intent to defraud.”

There is a curious trial of one Richard Hathaway,† as a cheat and impostor, before Lord Chief Justice Holt, in 1702-3. He was prosecuted on an information for pretending that he was bewitched by one Sarah Murdock ; and that he could only be cured by drawing blood from her by scratching her arm, which he did. No money was averred to have been obtained by him ; but he seems to have been convicted of an imposture. He was detected in rapping with his feet, and he pretended he could vomit pins. Lord Holt, during the trial, gave an admirable definition of a cheat.‡ He said : “ A cheat is a design to impose on the credulity of others, to induce them to believe a thing that is not true.” It was within this same rule that, at common law, if a goldsmith sold buttons made of base metal as silver buttons, he was indictable as a cheat.§ And so, if a clockmaker sold an imitation case for pure gold, it not being the article represented, and being sold by a public manufacturer or artizan in the course of his ordinary vocation, the seller was indictable as a cheat. || So also, selling a

* Rex v. Wheatly, 2 Burr. R. 1127, per Ld. Mansfield, cited and approved in People v. Babcock, 7 Johns. R. 204 ; People v. Sully, 5 Parker Cr. R. 165 ; 2 East P. C. 818 ; 1 Bishop Cr. L. § 1007 ; 2 Ib. § 142.

† 14 Howell St. Trials, 640.

‡ Page 654.

§ King v. Bonny, Tremaine P. C. 106.

|| King v. Chamberlain, Ib. 105.

copy as an original picture, with false marks on it to imitate the genuine, is a cheat at common law.* And the reason was, that in all these cases the knavish artisan was pursuing a vocation open to the *public*, and was engaged in selling wares and merchandize to the Public at large. He kept, in other words, an open shop, to which any might resort for the purpose of buying, without previous introduction or personal acquaintance.

Bearing in mind what constitutes, as shown, a cheat at common law, let us look at our own statute.

In 1853 our Legislature passed "an Act to punish gross frauds and to suppress mock auctions," which provided that "each and every person who shall * * * *by means of any * * gross fraud or cheat, at common law*, designedly and with intent to defraud, obtain from any other person any money, &c., shall on conviction be punished, &c."†

This statute was drawn by one of the ablest criminal lawyers, that ever adorned the Bar of the State of New York.‡ He has passed away, leaving this and other records of his great genius and industry. His son (GEORGE W. BLUNT, ESQ.) is here to-day as my associate, and the representative of the People in his official capacity as Assistant District Attorney. His conduct of the rebutting evidence in this case has shown, that his father's mantle has fallen on no unworthy shoulders.

This statute was framed on that of 7 & 8 Geo. IV., Chap. 29, § 53, which was intended to prevent a subtle distinction between larceny and false pretences; but

* Reg v. Closs, 27 L. J. Mag. Cas. 54; Reg v. Sharman, 23 Ib. 51; S. C. 1 Dears C. C. 285.

† Laws of 1853, ch. 138, p. 219; 2 R. S. (5th ed.) 467, § 59.

‡ Hon. Nathaniel Blunt.

which did not provide against the commission of gross fraud, as our statute of 1853 does. Only one reported case under our statute will be found, that of *Ranney v. The People*,* but which could hardly be said to be a decision on the statute, for in that case it was conceded (p. 414) that the cheat was not indictable as such at common law; because it was a private lie, unaccompanied by any false token, and had no reference to the public interest. The authority is valuable, however, as showing what constitutes a false pretence.

Now I insist that the facts shown in the present case bring it clearly within this last statute, as a common law cheat. We have, first, the assertion of power to produce by supernatural means "spirit" pictures; coupled with the exhibition of pictures alleged to have been so produced, and the sale and receipt of money therefor. This, by a public photographer, in his open store, to the Public. Second, the fact that not only Tooker, but very many other persons were victimized out of money by this means, makes the injury a public wrong.

The evidence shows that Tooker paid Mumler for these so-called spirit photographs eight dollars; that Judge Edmonds paid fifteen; that Elmer Terry paid five; that David A. Hopkins paid also certain sums; that Luthera C. Reeves paid fifteen dollars; and that Charles F. Livermore paid twenty dollars. And Mumler's confederate and partner, Guay, testifies that in almost every instance these moneys were required to be, and were, paid in advance.

So that this man Mumler, if his own theory be true, stands in the position of one prostituting his religious belief as a means of making money. That is why I am

* 22 N. Y. R. 413.

surprised at gentlemen, who honestly believe in Spiritualism, pinning their faith to this case and to this man's performances as evidence of its power. If their faith be true, then Mumler has prostituted his religion for the sordid purpose of gain, and the case comes directly within the principle of the celebrated case which was tried only a short time ago in the northern part of this State—the case of *The United States v. Colchester**—where the defendant was indicted for practicing the tricks of a juggler for the purpose of making money thereby, without having taken out a government license so to do. In that case, this same plea, that Spiritualism is a religious belief, and that the tricks were miracles, was made, and the same specious arguments were urged as in this case, but the jury convicted him.

So, in the recent English case of *Lyon v. Home*,† where a widow aged seventy-five years was induced by a “spiritual medium” to adopt him as her son, and gave him nearly all her property, amounting to many thousand pounds sterling, under the belief that she was thereby fulfilling the wishes of her deceased husband. The Court of Chancery set the whole conveyances aside, as fraudulently obtained from the old lady while she was under the influence of delusions produced and encouraged by mechanical contrivances of the “medium.” On the trial of that case, some forty persons swore to their belief in miraculous appearances, raps, voices, and visions; but the Court summarily disposed of these exhibitions of credulity, and Vice Chancellor Gifford said, in his opinion in that case, speaking of “spiritualism,” “the system as presented by the evidence, is *mischievous*

* 2 U. S. Int. Rev. Record, 70.

† Law Reports, 6 Eq. Cases, 655.

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!"

So in the present case (and this shows how extensively this fraud affects the public interest), the following persons, after witnessing Mumler's performance, were actually induced to believe that there was some supernatural appearance of the so-called ghosts, not attributable to mechanical or artificial means: William P. Slee, Judge Edmonds, Elmer Terry, Paul Bremond, David A. Hopkins, William W. Silver, Luther C. Reeves, and Ann F. Ingalls. All these were certainly persons of at least ordinary intellect and common prudence, and most of them took extraordinary care not to be deceived. This illustrates how this man's performances are working the greatest mischief, namely, by imposing on the credulity of the Public. It is no mere sporadic imposition, but the credulous portions of the Public are systematically induced to part with their money by false pretences.

Now, what had Mrs. Mumler to do in this business? Tooker says she left, and went out as soon as he paid the money. Guay, Mumler's partner, says she was always present, as a general rule, down stairs, and was present when Tooker had his portrait taken. Jas. R. Gilmore, who sat the first time without success, says: "Mrs. Mumler, who sat in front of me at the second sitting, said to me while Mumler was closing the aperture, 'Now you will have a picture, and a good one;' and he adds, that she went on to describe the individual whom she saw standing at his back, and who would go on the photograph."

This shows that *she* knew how the trick was done. Mumler trusted *her*, if he did not trust any one else.

Silver says : " Her duties were in the reception room, which was on the first floor, below the photographic room. She received the orders, and sent them upstairs. * * * She received the customers, took their names, and sent them upstairs. She sometimes came up in the operating room. She gave cards to the customers to take upstairs."

Mrs. Luthera C. Reeves (who identifies her deceased relatives by the length of their ears), saw Mrs. Mumler come up and hold her hand on the camera about midway on the edge, and then she (Mrs. Reeves) heard raps upon the floor.

Mr. Fanshawe, the artist, saw Mrs. Mumler in the gallery, and told her he was not a believer, and had come to investigate the matter. He is not certain whether she went up with him or not.

Finally, Mrs. Ingalls says that Mrs. Mumler was the person she saw, and the one to whom she complained that the likenesses were so indistinct.

All these facts taken together show :

First. That more than one process was resorted to by the prisoner, and that he varied the process to suit the intelligence of the sitter.

Second. That in almost every case he received notice in advance of the age and appearance of the victim, so as to guess about the kind of relative deceased.

Third. That even with Mrs. Mumler's aid, he was not always able to accomplish the trick ; especially when sharply watched, as by Livermore, who sat five times.

Fourth. That Mrs. Mumler's aid was valuable, when two persons were present, to distract attention by raps, as she did in the case of Mrs. Reeves.

Fifth. That *she* knew the trick, and could tell when it was successful.

Sixth. That she was a *particeps criminis* in the matter. The Law does not, in such a case, excuse a wife, nor presume that she acted under coercion of her husband.*

Lastly, in one aspect of the case, the prisoner was guilty of LARCENY by trick and device. I ask your Honor to bear in mind the definition of larceny: "The wrongful taking possession of the goods of another, with intent to deprive the latter of his property in them."† Now Tooker never intended to part with his money to Mumler, unless he received in return therefor a picture of a "spirit." It was only after he had parted with the money that he discovered it was a trick.

In a recent English case,‡ a Gypsy woman pretended she could lay spirits, and promised to do so, provided a certain sum of money were placed in the ground at a certain place by a Mrs. Prior, agreeing that in case she failed to lay the spirits, the money should be returned. Mrs. Prior fulfilled her part of the agreement, and the money disappeared; and Mrs. Prior, not being satisfied that the Gypsy was acting in good faith, had her indicted. And the court held that if the agreement was a mere trick or device to get possession of the money, with no intention to return it, the woman was guilty of a felony; and she was convicted of larceny.

* 1 Archb. Cr. P. 43-7; Quinlan v. The People, 1 Parker Cr. R. 9.

† 1 Colby Cr. L. 623.

‡ Regina v. Bunce, 1 Fost. & Fin. 523.

A word in conclusion. In discharging my professional duty here I may have seemed to occupy time unnecessarily. But this case is simply one of many, where an adroit criminal is attempting to evade the hand of justice, and to practice, untrammelled by fear of human consequences, a most wicked fraud as a livelihood. The Law is not only for the protection of the strong and prudent. "It grants no license to the cunning man to deceive the simple by artifices, which he proportions to the mental strength of those with whom he has to deal, just as the poisoner proportions his drugs to the bodily strength of his victims."

The Chief Magistrate of this city, with an energy that does him honor, has determined to put a stop, if possible, to these wholesale swindles. The Arm of the Law should be liberally extended to aid him in his efforts. And I submit to your Honor, with entire confidence, that probable cause *has been shown* in this case, to amply warrant the commitment here asked for. If the prisoner's innocence is as strong as his supernatural powers are said to be, perhaps, like some of his "spirits," he may be able before a jury of his countrymen, to create in their minds a marked impression of that innocence by his own reflected light!