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BELIEF IN THE PRETERNATURAL, AND ITS
EFFECT UPON DISPOSITIONS OF PROPERTY.

I.

CONVEYANCES INTER VIVOS.

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THE widespread belief in the existence of preternatural beings and influences, and in the possibility of holding intimate communication with and acquiring control over them, is so firmly rooted in the minds of men of all conditions of life and all degrees of education, and affords so easy an opportunity for profitable deception and imposition, that it would not be likely to escape the notice of the law; and, in fact, both criminal and civil courts have been compelled to pass upon its pretensions in various ways and in numerous instances. In criminal law it has been recognized chiefly under the subjects of homicide and false pretences;¹ in civil law it first came into prominence in connection with the subject of defamation. When witchcraft was a capital felony, the accusation of being a witch was

¹ 14 *Crim. L. Mag.*, 1.

no slight imputation; and the old reports and abridgements are full of such cases, although, like many other defamatory words, it seems in time to have lost its original opprobrious meaning to a considerable extent, and to have become a common word of abuse, such as "crank" or "crazy," in our day.¹ With the repeal of the statutes which made it a felony, the slanderous character of the imputation of being a witch or of practising witchcraft almost entirely vanished; but as it is still made an offence in many States to pretend to practice it, there seems to be good reason to hold that if the imputation of being a witch will bear the sense of pretending to be one, it will still be slanderous.²

The powerful nature of the influence which these beliefs, and their promoters through them, exercise upon the minds of those who put their trust in them was early recognized by the Courts of Equity, and the inflexible rule that whenever any transaction between persons in a confidential relation, that gives one of them a preponderating influence over the mind of the other, inures to the advantage of the one who possesses that influence, the law will presume that he exercised it unduly, is now applied as jealously to spiritual advisers as to or to any other confidential advisers, as attorneys or guardians.³ The rule needs no argument to support it. As was well said in *Ross v. Conway*.⁴— "That the influence which the spiritual adviser of one who is about to die has over such person is one of the most powerful that can be exercised upon the human mind, especially if such mind is impaired by physical weakness, is so consonant with human experience as to need no more than its statement." The influence he has over those in sound health is but little less powerful. Any dealings,

¹ Rolle's Abr., 44, etc.; Viner's Abr., Vol. 1, 420; Select Pleas in Manorial Courts (Vol. 2 of the series of Ancient Pleas published by the Seld. Soc.), 143.

² *Wisa v. Lewandouski*, 19 W. N. C., 158 (1886).

³ *Norton v. Relly*, 2 Eden, 286 (1764); *Huguenin v. Basely*, 14 Ves., 273 (1807).

⁴ 28 Pac., 785 (1892).

then, between such an adviser and those who confide in him will be very jealously scrutinized for evidences of presumptive undue influence; and if there be no consideration, or only an inadequate consideration, for conveyances or other transactions between them, they will be presumed to have been procured by undue influence, and to be invalid, unless the grantee can prove affirmatively that there has been no unfair dealing on his part. It is not enough, however, that the grantee in such a case should show that his own conduct has been fair and unobjectionable; he must also show that the conveyance was the free act of the grantor, proceeding from the exercise of his own reason, and not from the persuasion of the grantee, fortified by the confidence which the grantor placed in him; in short, that it was not due to either the conscious or unconscious operation of the grantee's influence.¹ The relation creates the presumption of undue influence, and the burden of proof rests upon the grantee to disprove it.

Gifts by nuns to their convents come under the operation of the general rule, and will be set aside, unless the grantees can disprove undue influence;² but when a professed nun, who has assigned all her property to trustees for the benefit of a Roman Catholic institution, petitions for the transfer of a fund to which she is entitled to those trustees, the Court cannot refuse to make the order requested, merely because the assignment may have been procured by undue influence. "To say that a lady, in the full possession of her faculties, is not to deal with her property because she is under the influence of those who may induce her to deal with it in a way which we should consider unwise, would be attributing to the Courts of England a power which I do not think that they possess."³ This

¹ *Corrigan v. Pironi*, 23 Atl., 355 (1891).

² *Whyte v. Meade*, 2 Ir. Eq. Rep., 420 (1840); *McCarthy v. McCarthy*, 9 Ir. Eq. Rep., 620 (1846); (but see *S. C. Fulham v. McCarthy*, 1 H. L. Cas., 703); *Œuvres d' Aguesseau*, tom. 1, pp. 284, 297 (tom. 2, p. 23, ed. 1761), and tom. 5, p. 514, cited in 2 L. Cas. in Eq., 622.

³ *In re Metcalfe's Trusts*, 2 De G. J. & Sm., 122 (1864).

decision is very severely commented upon in 10 Jur. N. S., pt. 2, p. 91, as follows: "Their (*i.e.*, the Lords Justices') decision is, in one respect, deserving of consideration; it shows how, if it remains unreversed, conventual establishments may, with ease, and apparently without scandal, obtain either for themselves, or for other purposes of the Church of Rome, the entire property of all who, as professed nuns, take the vows of obedience and poverty, the observance of which, at any rate, that Church has so great an interest in enforcing." But these strictures are unreasonable, and a trifle unjust to the judge who delivered the opinion, L. J. KNIGHT BRUCE. The writer wholly overlooks the fact that the application in this case, so far as appeared, was made by the nun herself; and that the rule of undue influence cannot be invoked by third parties to prevent a person from doing with his property what he pleases. No Court has power to interfere with any disposition of his property made by a person of sound mind, unless it be one which the policy of the law does not countenance; and then only on the application of the grantor himself, if he be living. Of course, if he be dead, his heir or personal representative may attack the conveyance, for then they have an interest in it; but while he lives, they have no interest which will entitle them to call it in question. It may be that the writer in the Jurist had running in his head a recollection of the old rule of the civil death of one who had taken monastic vows; but that question was raised in the argument of the case, and dismissed by the Lord Justice as "mere nonsense," which it certainly is at this day, both on principle and authority.¹ The rule is far more dead than it ever made any one who came under its operation, and neither that nor any other rule of law will authorize a Court to interfere with a conveyance to which the grantor continues to assent, no matter if the conveyance and the assent be both procured by undue influence.

¹ *Evans v. Cassidy*, 11 Ir. Eq. Rep., 243 (1847); *Blake v. Blake*, 4 Ir. Ch. Rep., 349 (1853).

While the grantor lives he is the only one injured ; and if he does not complain, no one else has any right to call it in question.

The *prima facie* presumption of undue influence thus created by the law can be rebutted by showing that the conveyance was for an adequate consideration, or was the voluntary act of the grantor, not procured by any objectionable conduct on the part of the grantee, nor due in any degree to the operation of his influence.¹ Even if without consideration, the presumption of invalidity can be thus overcome. In *Kirwan v. Cullen*,² the donor was a woman of full age and competent understanding. The gift was made through an agent, who had no interest therein, to men of high position in the Church, who derived no personal benefit from it, but merely acted as trustees for the purposes of the gift. One of them had, it is true, been the spiritual adviser of the donor in former years ; but she had even then acted in entire independence of him, and that relation between them had ceased two years prior to the execution of the gift. Under such circumstances there was manifestly nothing on which to hang a presumption of undue influence.

The reasons which have led the Courts to put upon the grantees, in such cases, the burden of proving affirmatively that the conveyances are the free and voluntary acts of the grantors, and not procured by the exercise of any undue influence by them, nor due in any degree to the active or passive operation of the influence which they possess over the minds of those who confide in them, apply with greater force to those cases in which the grantee is not merely a spiritual adviser in the usual sense of the term, but imposes upon his dupes by a claim to the possession of preternatural powers or of a preternatural nature that is clearly false ; and if a conveyance to a *bona fide* spiritual adviser is set aside, unless he can show that there has been the utmost good faith on his part, so much the more ought a convey-

¹ *Corrigan v. Pironi, supra.*

² 4 Ir. Ch. Rep., 322 (1854).

ance to be set aside which has been induced by the representations of a man that he is of a supernatural character.¹

Thus far the law is perfectly clear ; but what is the rule with regard to gifts or conveyances for inadequate or no consideration made to those persons who are not spiritual advisers in the usual sense of the term, and whose preternatural claims are not demonstrably false, but may be considered as being still in doubt—of whom the most notable examples are the so-called spiritualistic mediums? The Courts have solved this problem also by declaring, with great unanimity, that the relation of the medium to those who put their confidence in him and the manifestations he produces is analogous to that of a spiritual adviser, and that the same rules of law apply to both. The leading case on this subject is *Lyon v. Home*.² The plaintiff, Mrs. Jane Lyon, a childless widow, past seventy, had been left at her husband's death the absolute owner of a large fortune, a great part of which had been transferred to her by her husband during his lifetime, the whole producing an income of over £5,000 a year. She was very devoted to the memory of her dead husband, and was of a somewhat visionary nature. Having become acquainted with the claims and phenomena of Spiritualism, she called upon Mr. Home, the defendant, who was a so-called medium, and was induced by him to believe that a manifestation of her dead husband was taking place through his instrumentality. The manifestations were by means of rappings, which Home interpreted to mean : "My own beloved Jane, I am Charles, your own beloved husband," etc. Mrs. Lyon was much gratified, and asked the defendant to call upon her at her lodgings, which he did the next day, and a similar performance took place. A few days later he called again, and this time evoked a message to the following effect : "My own darling Jane, I love Daniel (meaning the defendant) ; he is to be our son ; he is my son, therefore yours ;" and also that Mr. Lyon wished Daniel to be independent,

¹ *Nottidge v. Prince*, 2 Giff., 246 (1860).

² 6 L. R. Eq., 655 (1868).

as he was their son, the manner to be indicated at another time.

By means of these and similar manifestations, Mr. Home so wrought upon the mind of the plaintiff that she transferred to him stocks to a considerable amount, made a will in his favor, executed a deed-poll declaring that she had transferred the stocks to the defendant of her own free will and pleasure, and without the influence, control, or interference of the defendant or any other person, and finally executed an assignment and declaration of trust of a sum of £30,000 secured by mortgage, which assignment was in trust to pay the income to the plaintiff for life, and subject thereto, the trustee (who was a friend of the defendant), should stand possessed of and interested in the said £30,000 in trust for Daniel Home Lyon, the defendant (he had previously adopted the name of Lyon by deed-poll, dated December 3, 1866), and declaring that this provision was to be in addition to and not in lieu of the gifts of stock previously made to him.

Thus far all had been plain sailing for Mr. Home, so plain indeed, that he seems never to have thought of being cautious; and this oversight on his part led to his final discomfiture. It would appear that Mrs. Lyon became alarmed at his rapacity, and coolness seems to have sprung up between them about this time. During the next five months the defendant was absent from London several times, and Mrs. Lyon took advantage of these absences to consult the gentlemen, who afterward acted as her legal advisers at the time of bringing suit, and also another spiritual medium, who procured her another alleged message from her husband, in which she was advised that the defendant was an imposter, and that she should go to law to recover her property from him. On the defendant's return to town the plaintiff demanded back the trust deed last mentioned, using violent language against him and his friends; but the defendant refused to surrender it, alleging her language as a pretext.

On the hearing, the defendant testified that the mani-

festations he produced were genuine communications from the spirit world, over which he had no control. Vice-Chancellor GIFFARD, after carefully reviewing the evidence, held that the case was that of one who stands in a position which affords him great influence over the mind of another, and therefore enables him to control the acts of that person to his own benefit; and held, following *Huguenin v. Basely, supra*, and *Dent v. Bennett*,¹ that the onus of supporting the gifts rested wholly on the defendant, the presumption being against their validity; adding, "To this I now add, for the reasons I have given, and having regard to the facts and evidence I have gone through, that in my judgment he has not made or proved such a case as is requisite for their support. There must, therefore, be a declaration in the usual form that the gifts and deeds are fraudulent and void."²

The *London Saturday Review* of May 2, 1868,³ has a long article on this case, which contains much that is suggestive. A few extracts from it may prove both interesting

¹ My. & Cr., 269.

² At the end of his opinion the Vice-Chancellor adds a few words in regard to the legal status of spiritualism in general which are well worth quoting, and from his mouth are certainly entitled to careful consideration. "I know nothing of what is called 'spiritualism' otherwise than from the evidence before me, nor would it be right that I should advert to it, except as portrayed by that evidence. It is not for me to conjecture what may or may not be the effect of a peculiar nervous organization, or how far that effect may be communicated to others, or how far some things may appear to some minds as supernatural realities, which to ordinary minds and senses are not real. But as regards the manifestations and communications referred to in this cause I have to observe, in the first place, that they were brought about by some means or other after, and in consequence of, the defendant's presence, how there is no proof to show; in the next, that the system, as presented by the evidence, is mischievous nonsense, well calculated, on the one hand, to delude the vain, the weak, the foolish and the superstitious; and, on the other, to assist the projects of the needy and the adventurer; and, lastly, that beyond all doubt there is plain law enough and plain sense enough to forbid and prevent the retention of acquisitions such as these by any 'medium,' whether with or without a strange gift; and that this should be so is of public concern, and, to use the words of Lord Hardwicke, 'of the highest public utility.'"

³ Vol. 25, p. 581.

and useful. After some general remarks, the writer says: "Whichever view is entertained by the Court as to the motives of Mrs. Lyon, on either side there still remains the very serious question to the community whether intimations from the spiritual world are to be recognized by the Court of Chancery. Mr. Home may be a very honest person, and may have only used the supernatural powers which he cannot help exercising. But, taking him at his word, his honesty leads to very odd results. In other words, the spirit world does business in a way which, if it is to be authorized by an English Court, must entail the necessity of a new code, not only of morality, but of law for the everyday world. Mr. Home gets out of a rich, old fanatical widow, who is of such a temper as to be at feud with her own and her husband's relatives, a fortune of very great value. . . . Home's contention is simple. He has done nothing wrong, nothing which the law ought or can interfere with, nothing conflicting with public policy, by receiving under these circumstances £60,000! What he wants the Court to believe is, that no undue influence—and it is utterly immaterial whether it is the influence of Home himself, or of Mr. Lyon, deceased—has been employed; and that the Court is bound not to interfere. This is not only what Mr. Home urges, but what his friends and advisers urge. In the face of this, which is what we are concerned with, it is irrelevant whether Mrs. Lyon was or was not inspired with the same sort of passion which, with its sweet pangs, attracted octogenarian Mrs. Piozzi to Augustus Conway. Nor is it necessary to say whether the spirit revelations are or are not true. However true they may be, our question is, whether we are to allow them to be other than undue influences. The spirits may be very virtuous, pious, pure, disinterested and righteous, and might arrange mundane things better than we do; but their sort of purity and righteousness is quite incompatible with our poor unspiritual society, such as it is. And, therefore, we cannot come to an understanding with the spirits. In other words, we reckon that the Vice-Chancellor

will have to notify to all and singular the spirits and souls of the righteous and unrighteous, to all witches and wizards, ghosts and ghost-seers, goblins and mediums, spirit drawings and airy harps, and to the whole rag-tag and bob-tail of devils and devilkens, that deeds of gift, assignments and wills dictated by the spirits to rich and silly widows, will be summarily set aside as transactions which English law and equity decline to recognize."

It will be noticed that the Vice-Chancellor does not take the ground suggested by the writer just quoted, but rests his decision on higher and more general principles. In so doing he stands on firmer ground; for while the reasoning, more implied than stated by the latter, seems very plausible at first sight, it does not really dispose of the question, but only leads to another. As far as it goes, however, it is very forcible. Granting for the sake of the argument that it is possible for us to hold communication with the spirits of the dead, can such influences as those brought to bear upon the plaintiff in this case be treated by the courts as perfectly proper and worthy to be upheld? "By their fruits ye shall know them." Certainly the only means of testing the propriety of these spiritual influences is by noting their results, and as these are good or bad, classifying the influences accordingly. When this test is applied to the influences now in question, there can hardly be any difference of opinion as to their nature. And if a spiritual influence produces a result, which the justice or the common-sense of mankind would condemn as the result of influence exerted by a human being, why should any special privilege in this respect be granted to a spirit which thus abuses its power over the mind of a mortal, and manifests an unmistakable propensity to use that power for evil? Other considerations aside, such treatment as that suggested would naturally have the tendency to discourage the spirits from exerting their powers in this improper way. Taking it as proved, then, that Mr. Home was, as he claimed, only the mouth-piece of a spirit which actually communicated the alleged messages through him, there would still be

sufficient reason for holding that the deeds and gifts were procured by undue influence. But in that view of the case the question might arise and be urged with some force (but ineffectually, as will be shown hereafter), that Mr. Home, being an entirely innocent party, would be entitled to the favorable consideration of a court of equity, and that the exercises of undue influence by the spirit would be no ground for setting aside the deeds made to him. It is clear, therefore, that the position taken by the Vice-Chancellor is the safer and simpler, as it wholly does away with the question of the preternatural, and makes the decision depend entirely on settled principles of law, without invading new, untried and problematic fields of speculation.¹

¹ A writer in the *Law Times*, vol. xlv, p. 5, however, takes exception to this decision, and comments rather severely, and, it would seem, unwarrantably, upon what appear to him to be its logical consequences; "This is not the common case of a weak mind enthralled by a strong one—of advantage taken of ignorance. She is not ignorant; she knows too much, or rather, she thinks she knows more than she does know. She verily believes in the spirits, and that the spirits can and do communicate with mortals, through certain mediums, under certain conditions. In this her creed is not more irrational than many creeds professed by whole nations, ancient and modern. Belief in such a doctrine does not in itself prove such weakness of intellect that she is not responsible for her acts, and therefore not to be bound by that which she deliberately does. A voluntary gift is not invalid merely because it is voluntary; it is not to be set aside for lesser cause than would invalidate a bargain and sale. The question is the same in both—was the donor a *free agent*?—meaning by this, a person free in mind as well as in body; did she know what she was doing? did she intend what she did? was she competent to form a fair judgment? It is not whether it was prudent so to do, but whether she did that which her uncontrolled will inclined her to do? If there was coercion over body or mind, her act would be properly set aside; if there was no imposition, it would be avoided; but then comes the question, what is imposition? Can one person be said to impose upon another where both hold a common creed which both, at the time and afterward, sincerely maintained? Could a Roman Catholic priest believing, say, in the miraculous powers of a relic, be said to impose upon a Roman Catholic layman who also believed in them, when operating with it for a cure? Mrs. Lyon bestowed her bounty upon Mr. Home because she had faith in spiritualism, and therefore believed that her husband's spirit, rightly invoked, could and would communicate with her. She was not a fool, far from it. She was very shrewd; but she held an irrational creed. That credulity in spiritual matters is not inconsistent with great shrewdness in mundane affairs is testified by the experience of all ages and

A similar case (on the other side of the house) was decided in the Supreme Court of New York in 1883.¹ The defendant, who was a woman of bad character, had been for years practising the profession of a clairvoyant physician, when she met the plaintiff, who, for his part, was a strong believer in spiritualism, believing that the mediums through whom the spirits of the dead communicated with the living were to be treated with the highest regard, and that if they were not obeyed something terrible would befall the person

countries. The question, therefore, comes back to this. Was Mrs. Lyon in the possession of her senses, acting of her own free will, and designing the gift at the time of making it? If so it was, she has no title, because she afterward repented of her generosity, to ask a court of justice to compel the recipient of her bounty to return it. . . . The first impression made by the evidence is that advantage was taken of the plaintiff by the defendant, and the feelings are therefore strongly enlisted against him, and there is a desire that he may be disappointed. But when feeling is put aside, and the strangeness of the spiritualist's creed forgotten, and we look only at the fact, that a woman of more than ordinary sagacity gave to a man whom she believed to possess certain miraculous powers, a large sum of money, from a desire, then sincerely entertained by her, to benefit the object of her admiration, we shall probably come to the conclusion that no sufficient cause has been shown for the interference of the law to undo the act of benevolence now that her feelings toward the object of it have changed, and she repents of her generosity. Such a principle so established would be applicable to cases far beyond the range of spiritualism. It would affect many religious and not a few charitable gifts." But in spite of this direful forecast, there is nothing in this argument which at all weakens the force of the decision. The writer wholly ignores what was the true basis of the decision, that the relation in which the medium stands to his followers is a confidential one, and governed by the same rules as any other confidential relation; and that therefore the burden of proof is upon him to show that he is free from the suspicion which attaches to him by virtue of that relation. He also ignores the uncontrovertible fact of the controlling influence of such beliefs, which does not leave the mind free to act in regard to them, and that the question is not one of general weakness of mind, but of weakness in this particular direction. Nor, as he seems to assume, did the presumption of imposition arise from the acts of Home; it arose from the relation of the parties to each other, and was not a case of actual, but of constructive, fraud. It was this presumption of law, not merely the proved facts of the case, that was the basis of the decision; and with this the whole argument of the writer falls: for his position is very clearly based upon the supposition that this was held to be a case of actual fraud.

¹ *Hides v. Hides*, 65 How. Pr., 17.

disobeying. The defendant at first pretended that she could cure his deafness ; and after a course of treatment, during which she probably became acquainted with his weaknesses, she proposed that they be married. On his saying that he was too old, she told him that the spirits said that they must be married within two weeks ; that if it went over that time something would step in between, and that they, the spirits, would not be responsible for the consequences. She also persuaded him to give her a deed of certain lands, saying that the spirits said that he must give her the deed before they were married. After the marriage, the plaintiff became aware of her true character and brought suit to have the marriage annulled and the deed set aside on the ground of fraud. In her answer the defendant denied that she made the representations alleged by the plaintiff, and inserted the following damaging paragraph : " And upon her information and belief alleges that at all times prior to the time mentioned in the amended complaint at that time and ever since, the spirits, if any, were, and are otherwise occupied than in interfering with or directing mundane transactions concerning either matrimony or real estate."

The referee found for the plaintiff on both questions ; and his report was affirmed by Justice LANDON in a lucid opinion,¹ which, although in great part based upon the ad-

¹ " It appears clearly, by the evidence upon which the referee bases his report, that the plaintiff's consent to the marriage was obtained by fraud. . . . His consent was given under the delusion that the authority which he held in the highest awe and reverence commanded him to give it, and would be gravely offended if he did not. She created that delusion by falsely representing that the spirits gave the command. That his mind was predisposed by the faith of many years to a readiness of belief in the truth of such representations made him, it is true, the more easily a dupe and a victim, but it does not make the grossness of the deception less, nor accord to the impostor any protection. It may be that a person of ordinary prudence would not have been deceived by such representations, but the law does not outlaw from its protection the old, the weak and the infirm. A pretense, says Mr. Bishop (2 Cr. L., Secs. 432, 436), calculated to mislead a weak mind, if practised on such a mind, is just as obnoxious to the law as one calculated to overcome a strong mind if practised upon it. Besides, ordinary prudence is a flexible term, and we cannot say that any other person of average capacity would not, under similar circum-

mission of the defendant that her representations were false, serves to refute the argument of the writer in the *Law Times* that Mrs. Lyon could not be said to have been imposed upon by Home, because she believed in the truth of the manifestations produced by him.

So, also, a conveyance of a large part of his property by a man shortly before his death, in consideration of \$1 and friendship, to a woman with whom he had lived for years in adultery and through whom he had obtained alleged messages from his deceased wife, will be set aside on the ground of undue influence;¹ and when an ante-nuptial contract is entered into between a firm believer in spiritualism and a professed medium who possesses much control over him, whereby they mutually agree to marry each other, and the intended husband grants to the woman certain property, but subsequently refuses to fulfil the agreement to marry and does not complete the grant by delivery, the woman cannot recover the value of the property in question by suit after his death.²

The law then, is perfectly clear in regard to all cases where the gifts obtained by such means enure directly to the benefit of the spiritual adviser, the medium or pretender to preternatural power; but there remains the case, which is by no means improbable, of a third person benefited by such impositions. If this third person had hired or in any

stances, have been deceived by such representations, provided his spiritual or religious belief was of the same kind and intensity as the plaintiff's. Our law prescribes no religion, but tolerates all and condemns none, and, therefore, the plaintiff's case suffers no detriment because his religious belief exposed him to the arts of the defendant."

¹ *Leighton v. Orr*, 44 Iowa, 679, 1876.

² *Connor v. Stanley*, 72 Cal., 556 (1887): "It is established that the relation between the parties was confidential, in consequence of her claim to power as a medium, through which she had great control over him. This being established, the burden was cast upon her of showing that there was no undue influence. The rule applies with peculiar force to the relation of one and his priest, confessor, clergyman or spiritual adviser, and certainly with no less force to the relation between one who is a firm believer in, not to say a monomaniac upon, the subject of spiritualism, and the medium in whom he has confidence and upon whom he habitually relies."

way procured the services of the spiritual adviser or medium with a view to profiting by the manifestations and communications of the latter, or even if this were not the immediate aim, but only an incident of the transaction, there could, of course, be no question as to the rights of the parties; for the person who procured the services of the medium would be *particeps criminis*—a party to the fraud—and could have no valid claim to profit by it. This is the rule in the case of a will procured in the manner just mentioned;¹ and the same doctrine with respect to a deed has just been enunciated by the Supreme Court of California :²

“Any dealing between them, under such circumstances, will be set aside as contrary to all principles of equity, whether the benefit accrue to the adviser, or to some other recipient who, through such influence, may have been made the beneficiary of the transaction.” Even if the beneficiary was innocent of any share in the transaction, the gift could not be upheld; for, as was said by Sir W. PAGE WOOD, V. C. :³ “Where once a fraud has been committed, not only is the person who has committed the fraud precluded from deriving any benefit from it, but every other person is so likewise, unless there has been some consideration moving from himself. Where there has been consideration moving from a third person, and he was ignorant of the fraud, there such third person stands in the ordinary position of a purchaser without notice; but where there has been no consideration moving from himself, a third person, however innocent, can derive no benefit from the transaction. . . . The truth is, that in all cases of this kind, where a fraud has been committed, and a third person is concerned, who was ignorant of the fraud, and from whom no consideration moves, such third person is innocent of the fraud only so long as he does not insist upon deriving any benefit from it; but when once he seeks to derive any benefit from it, he becomes a party to the fraud.”

¹ *Greenwood v. Cline*, 7 Or., 17, 1879.

² In *Ross v. Conway*, 28 Pac., 785, 1892.

³ *Scholefield v. Templer, Johnson*, 155, 1859.

But suppose that all imputation of underhand dealing could be successfully refuted, and that both the medium and the person benefited appeared in the character of innocent parties. In such a case it would be necessary to hold that the influence of the spirits is *per se* undue, or that the pretence of the possession of preternatural power is false and a fraud in itself; or else to hold that the transaction is regular and unexceptionable. This question has not yet arisen; but it is highly probable that when it does, the courts will take their stand squarely upon the ground suggested by the *Saturday Review*, and to which the Vice-Chancellor very strongly inclined, to judge by his words, in *Lyon v. Home*, and pronounce all such alleged manifestations and communications from the spirits of the dead to be a fraud *per se*, and all conveyances and gifts which are procured by such means to be fraudulent and void. As bearing upon this phase of the question, it is a very significant fact that the two mediums consulted by Mrs. Lyon procured for her totally different communications—a fact which certainly tends to strongly discredit them, and would naturally create in a thinking and unbiassed mind a suspicion that all like them were fraudulent. If then, a case should arise in which the question of undue influence could not be successfully pressed, there would still remain the question of fraud; and it would seem to be consonant with common-sense and the general experience of mankind to hold that all such professions are fraudulent, and that, therefore, all gifts procured by means of them are fraudulent and void, even though the person benefited had no share in procuring them. It is certainly a strong argument in support of this view that there is no reported case in criminal law in which similar pretensions have been held to be otherwise than a fraud and a false pretence.¹

It may be regarded as settled, then, that any gift or voluntary conveyance, which is the result of alleged spiritual manifestations or communications, and enures to the benefit

¹ *Crim. L. Mag.*, 1.

of the medium who procures the manifestations or communications, or to the benefit of a third person who has hired or otherwise secured the services of the medium to bring about these manifestations or communications, whether with the object of profiting by them or not, is to be considered in equity as procured by the exertion of undue influence, arising out of the relation in which the medium stands to the person who is induced by his belief in these manifestations to execute the conveyance; that even where the person benefited is free from any participation in the transaction, he is, nevertheless, to be considered as a party to the fraud if he seeks to secure any benefit from it; and it is urged that even if the presumption of undue influence could be successfully refuted, it would still be based upon sound principle to hold that the professions of the mediums were *per se* a fraud, and that no conveyance which was due to them could be upheld. If, however, there is nothing to show that the peculiar belief of the grantor influenced him in making the conveyance, no mere absurd preternatural belief will, of itself, be sufficient evidence of mental incapacity to set it aside. "Many persons believe in spiritual manifestations, insist that they have communications and conversations with deceased friends and the like; yet such things are not necessarily evidence of such a disordered mental condition as to show that those who hold such opinions are unfit to make a disposition of their property."¹

PHILADELPHIA, PA.

¹ Lewis v. Arbuckle, 52 N. W. (Iowa), 237.