

who having learned the tricks of the trade themselves gave performances, explaining the plaintiffs' performances and exposing their alleged occult powers. In their advising notices they gave prominence to the words, "The Fays" to such an extent that certain persons were deceived, and went to the defendants' performances thinking they were going to see the plaintiffs. The suit was for an injunction restraining the defendants from thus misleading the public. The judgment of the learned judge before whom the matter came on appeal is reported in *Albany Law Journal*, 1908, page 46. He says:—

"The situation disclosed is such that equity should not interfere at all. The plaintiffs are engaged in deceiving the public, and the most entertaining part of their performance is in effect fortune telling. In such a business they can get no property rights in a name or appellation which a Court of equity will protect. The property right which the plaintiffs assert they have in the term 'The Fays,' and which they would have if their business was without deception, is similar to the right to the use of a trade-mark. Equity will not interfere to protect a party in the use of a trade-mark where the name or phrase claimed as such is intended and calculated to deceive the public: *Fetridge v. Wells*, 4 App. Pr. 144; *Gluckman v. Strauch*, 99 App. Div. 361. A party invoking the aid of equity to restrain the infringement of a trade-mark must himself be free from fraud in his representations to the public: *P. M. Co. v. P. M. P. Co.*, 135 N. Y. 24. Persons who pretend to tell fortunes are defined to be disorderly persons (Criminal Code, section 899). The pretense of occult powers and the ability to answer confidential questions from spiritual aid is as bad as fortune telling and a species of it, and is a fraud upon the public. It is no answer so far as the plaintiffs are concerned that no one ought to believe the pretenses. It is the half doubt and the half belief of a certain class of people that make and hold the audiences. If every one wholly disbelieved curiosity would soon be satisfied and the entertainment lose its attraction. Nor is it any answer to say that the defendants are themselves