SÉANCES AND STATUTES

BY

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In Scotland law and equity are close companions, but in England litigants are more liable to painful experiences of anomalies even to hearing a sitting judge declare his sympathies are with the defendant, but his duty is to administer the law. The immense amount of protracted legal process points also to the "written law" being quite often unintelligible even to those learned in it. Some enactments continuing in force are centuries old, yet the phraseology in the courts of justice is as immutable as counsel’s wig and gown, notwithstanding that the primary signification, now forgotten, has altered in modern parlance to something never anticipated by the ancient draftsmen. The thinking layman who rubs shoulders to any great extent with jurisprudence may well fear that the preservation of archaic statutes (so liable to lead to misunderstanding and tedious argument) is as capricious a directive factor in verdicts, as wind is to a weather vane.

A second factor of importance in the eyes of the technical litigant is that eminent barristers, while steeped in legal intricacies, are often without elementary knowledge of the matters falling to their examinations. Some counsel are versed in the classics even to bandying quotations with the equally scholarly judge, others again have facility in history, philosophy, literature, or other branch of a University curriculum, but generally neither time nor inclination has permitted the acquisition of a skilled insight into any mechanical trade or scientific study. It is distressing to a practical client to listen to his highly-feed advocate disregarding time to establish a legal quibble when a valuable point could be gained by a few direct questions on technical matters. To achieve success there are some barristers who will, with commendable assiduity, study text-books to obtain a comprehensive grasp of the theory of an art or craft, but with the best will in the world the gleanings of a few days cannot reach the completeness attained by a professional in many years. Even outside the operative callings the legal luminary seldom masters the rudiments of an extrinsic subject, and this is particularly noticeable with psychic phenomena, which, centuries ago, regarded sometimes as acts of witchcraft, occasionally as sorcery, have come in our own time to be classed in the courts as fraudulent juggling.

To satisfy the reader that these observations are not captious criticism and that lawyers do make trivial mistakes over archaisms reference is directed to Wharton’s Law Lexicon, so popular a compendium that by 1938 it had exhausted no fewer than fourteen editions. Opening the first page, under art. "Ab," may be seen 1An instance otherwise will be seen below, p. 9.
the wild derivation, accepted without comment from the centuries-old Law Dictionary of Blount, i.e., "Ab. at the beginning of English-Saxon names of places, is generally a contraction of Abbot or Abbey . . . as Abingdon in Berkshire." In point of fact, this locality having been formerly Æbbandun, the signification is Æbb’s dun (hill). Turning to near the end of the book, under art. "Witchcraft," there are illustrations of that dreadful phase of Christianity, which have been collected most recklessly. The story of mother and child being hanged in Huntingdon for selling their souls to Satan in 1716 is derived from nothing more than a contemporary chap-book! There may have been an information and apprehension but the remainder of the relation is the write-up of an inventive journalist. In fact, a search of MS gaol books has revealed that the last execution for witchcraft in England was that of Alice Molland sentenced at Exeter Assizes, 20 March 1684/5, by Sir Cresswell Levins, Kt. During the life of the statutes, hanging was the penalty in England and no witch went to the stake unless convicted of some other crime, as e.g. petty treason. One has become familiar with novelists and magazine hacks romancing of faggots, but more exactitude is expected from a lawyer. The unfortunate women condemned by Sir Matthew Hale at no time occupied tar-barrels, but hangman’s nooses. Only in Scotland, as on the Continent, witches were burned, but usually after being strangled. Such inaccuracies repeated in a book of reference, edition after edition, is evidence that jurisprudents are not infallible and that error, not only in fact, but also in law, is not beyond expectation.

The history of Babylonians, Israelites, ancient Greeks, and Romans, indicates very irregular treatment of the practising "medium," ranging from tolerance to extermination. The ancient and popular art of necromancy is much mingled with magic, witchcraft, and sorcery: terms, in the absence of authoritative definition, often given equivalent value. In Britain, in pre-conquest days, both civil and ecclesiastical powers condemned wiccan, then corresponding to "soothsayers" (clairvoyants?). Sometimes the offence appears as consulting "evil spirits," from which characterisation it may be inferred that harmless ghosts were tolerated. Necromancy was included among the subjects prohibited by King Edgar (958-979). Britton, the principal legal writer of the thirteenth century, referred to sorcery (without defining its nature) as a capital crime. Thirteenth and fourteenth-century clerical decrees punished necromancers, pythoners, sorcerers, diviners, and soothsayers, but often

1Ewen, Witchcraft and Demonism, 1933, p. 461 (hereinafter EWD).

2Ibid., p. 444.

3Even the famous commentators, Coke (d. 1634) and Blackstone (d. 1780) are not free from oversights.

4A convenient digest of the laws is in Ewen, Witch Hunting and Witch Trials, 1920 (hereinafter EWH).
demanding nothing more than penance. Civil authorities were satisfied with abjuration.

Lenient treatment in an upper court is illustrated by the trial of John Crok of Tetteworth, in 1371, arraigned in the King’s Bench before Sir John Knyvet, L.C.J., charged with possession of a skull and book of sorcery. Upon swearing to the head having been taken from a Saracen and that nothing had been done against the faith of Holy Church, he obtained enlargement.

Soothsayers, false prophets, necromancers, and pythons, were reported as duping and cheating the credulous community on such an extensive scale as to create a public mischief. The City of London records of the fourteenth century certify the usual punishment to have been an hour in the pillory. One Berkyng additionally endured several week’s incarceration and was then allowed to abjure the City and the vocation of soothsaying. Early in the fifteenth century savage statutes against heresy passed and, every practice of an occult nature other than those of the orthodox church being heretical, mediums again, and until the repeal in 1 Eliz., must have been liable to death by fire, yet they commonly suffered no more than deprivation of civil rights by excommunication, or even escaped with purgation or admonishment.

Henry V commissioned doctors, notaries, and clerks, to destroy necromancers, witches and sorcerers, without defining their speciality and, as in the Codex Theodosianus, a thousand years earlier, the employers of a “medium” might also be charged. Such cases are actually entered in extant episcopal registers, for instance, on 22 June, 1457, Thomas Hulle of Hertford came before the Bishop of Lincoln and having confessed to engaging Thomas Curteys in the exercise of “nigromancy and heresy,” in All Saints Church, promised “never to use nigromancy in time to come.” In the Archbishop’s Court at York, in 1467, one Byg, an invocator spirituum, and sortilegus, who professed to find thieves in a crystal, upon conviction, underwent no more inconvenience than a penance. That necromancers had some fear of interference by authority even though dealing with harmless ghosts, appears from a petition in 1531 from two learned divines (Consell and Clarke) to Henry VIII craving licence to converse with spirits. Herbalists (and doubtless

1According to Cistercian Statutes, A.D. 1256-7 (ed. Fowler, 1890, p. 50) monk or lay-brother guilty of sorcery was disciplined by six days penance, two being on bread and water.

2K.B. 27, 443, m. Rex 23; EWD 34.


4Foedera, x, 852; EWD 38.

5Lincoln Diocesan Documents, EETS, p. 111.

6EWH 10.

7Hone’s Year Book, 1832, p. 213. I have not been able to trace an acknowledgement. Presumably these psychic researchers feared common law as well as ecclesiastical proceedings.
“spirit healers” came under the ban of 3 Hen. VIII, c. 11, but were again permitted to practice by 34-5 Hen. VIII, c. 8. It is patent that down to this date the treatment of psychic practitioners in both ecclesiastic and secular tribunals had been very uneven, but on the whole not harsh enough to discourage the main body, and necromancers of calculating and conjuring type flourished much as did such passive operators as clairvoyants and mediums.

Without any definition of terms, and so perpetuating uncertainty and confusion, the first statute against “conjurations and witchcrafts and sorceries and enchantments” is 33 Hen. VIII, c. 8, passed in 1542. Pertinent to the theme of the present paper it is to be observed closely that the prohibitions cover “any invocations and conjurations of sprites, witchcrafts, enchantments or sorceries, to the intent to get or find money or treasure . . . or for any other unlawful intent or purpose.” So far the inhibition is clearly confined to illegal operations and therefore it may have seemed unnecessary to specify evil spirits. Continuing, the act proscribes invocation of sprites, etc., to tell where lost goods are become. Apparently in this particular pursuit good as well as evil informers were banned. Few bills of indictment under the act have been preserved, and therefore of particular value is the pardon granted to one Morris, a yeoman, for crimes of the “magic arts, divinations, and soothsaying (offensiones ariolarum).” The phraseology of the charges points to his occult proceedings having been unrecognised as statutory offences, which might well be, if, as inferred, the written law did not apply to transactions with uninvoked harmless spirits except possibly in the discovery of misplaced chattels.

The influence of the statute remained after it had ceased to run, and an oath of abjuration in the King’s Bench, 23 June 1561, is particularly to the point. It follows the text of 33 Hen. VIII save that the word “unlawful” is omitted, consequently it covers invocation of both evil and good sprites for

1EWII 13.

2 Unless covered by “witchcraft, enchantment or sorcery” simple clairvoyance i.e., without invocation, is not thereby interdicted, nor is the discovery of lost persons, water supplies, etc., nor conference with ghosts, either with or without invocation. In later acts (Eliz. and Jas.) the reference to “invocation and conjuration” was dropped, perhaps as redundant.


4 The treatment of the Privy Council 1552 to 1556 continued as before, ranging from committal to the Tower to warning and release. A Welsh soothsayer bound over in 40 l. and enlarged at Ludlow in 1556, continuing to deceive the people, suffered further imprisonment in London (Acts Priv. Coun., N.S., v. 362). For cases in 1578 and 1580, see EWH 283.

Francis Coxe of St. Giles without Cripplegate, a “physician,” charged with sorcery, came before the Privy Council. With others he stood on the pillory within the Palace next the Great Hall of Pleas. His abjuration is on Controlment Roll, K.B. 29, 194, m. 52. Two pamphlets are (i) The Unfatted Retraction of Frances Coxe, 1561; (ii) A Short Treatise declaring the Deleterious Wickednesse of Magickal Sciences, as necromanecie, Conservations of Spirits, Curious Astrologie, and such tyke.
any purpose. An indictment of the same year charges the discovery of money by invoking evil spirits (to make doubly definitive adding cacodemons).\(^1\) Realisation of later legislators that ambiguity had resulted in misunderstanding may also be demonstrated. With the accession of Queen Elizabeth ecclesiastics pressed for a new statute, and in 1563, was passed 5 Eliz. c. 16,\(^2\) the draftsman of which, in the preamble, although citing the act of 33 Hen. VIII, and especially the invocations and conjurations practised “since the repeal,” amends it by specifying only “evil and wicked spirits.” No intention of limitation could be expressed more clearly. In the prohibition of occult detection of treasure or lost goods, invocation and conjuration are no longer detailed and the ban may be read as covering in a limited degree the advices of good spirits. A further act, 23 Eliz. c. 2, made a capital felony of “conjurations or other like unlawful means” of determining how long Her Majesty would live, etc.\(^3\) For this special line of divination spirits either good or evil were obnoxious in the eyes of the Queen, as with any ruler objecting to his future being investigated. As in the other acts, aiders, procurers, and abettors were graded equally culpable with principals.

With the legal compendiums of the sixteenth and seventeenth centuries attempts were made to define various terms describing the occult, but without sweeping away ambiguities and confusion. Neither the difference (if any) between “witchcraft” and “sorcery,” nor the respective scope of the arts, has ever been generally established.\(^4\)

It is of interest to compare the Scottish act passed by the ninth Parliament of Queen Mary (i.e. 1563) forbidding the use of “witchcraft, sorsarie and necromancie . . . under the pane of deid alsweill to be execute aganis the yer abusar as the seikar of the response or consultation.”\(^5\) In Scotland many dittays (indictments) disclose that psychic manifestations without any known association with the devil were included under “witchcraft” and “sorcery,”\(^6\) and the

\(^1\) Suffolk Assizes (K.B. 9, 604, no. 19). For further procedure without a statute, see EWD 45n.

\(^2\) EWH 15. Adopted by the Irish in 1586.

\(^3\) EWH 18.

\(^4\) W. West’s Symbolaeographie. 1594, ss. 168, 173 (see EWH 22f) includes necromancy under magic. Soothsaying and witchery involve conference with the devil, and sorcery is not mentioned. Michael Dalton, The Country Justice, 1618, who follows, introduces sorcery as calling for no conference with the devil, although contradictorily covenants are said to be made with him (p. 275 (279) ed. 1630). The distinguished jurisprudent Coke in his Third Institute (ch. vi) printed 1644, defines a witch as “a person that hath conference with the devil; to consult with him to do some act.” But neither Elizabethan nor Jacobean translators of the Bible had thought so. See the contents head to I Sam. xxviii, the text having no reference to devil.

\(^5\) EWH 26.

\(^6\) For example, Thomas Greave (of Fife) was charged inter alta with washing the sark of Elspeth Thomasone in south-running water and putting it upon her, curing her of a grievous sickness, “thereby committing manifest sorcery and witchcraft.” (Pitcairn, Criminal Trials, iii, 557).
act is heavily loaded not only against "mediums," but also against the "sitters." That the patron, as in the English acts, was regarded as no less sinful is illustrated by the trial of Barbara Naipar of Edinburgh, 8 May 1591, charged with consulting Agnes Sampson, the wise woman of Keith, and Richard Graham, called "necromancer and abuser of the people," to obtain help in personal matters contrary to the statute.

The Act of 1 (2) Jas. I, c. 12 repealing that of 5 Eliz. repeats its phraseology, i.e., "any invocation or any conjuration of any evil and wicked spirit." The fact that in both of these statutes spirits are particularised as evil gives further indication that good were recognised and tolerated, or amply treated in common law and ecclesiastical courts.

The original broad meaning of wicce covering the psychic "medium" tended to become obsolete with criminal officials south of the Border, and "witchcraft" applied rather more to the black variety of the art, although the ancient signification survived in some parts of England, in Scotland, and our American Colonies. Here also, certain application of clairvoyance (but not under that title) is proscribed without any reference to evil spirit. Apart from this possible exception the implication is that no English statute made communication with ghosts of innocent character a felony and support is obtained from every reference to entertaining or conjuration in bills of indictment, since they uniformly specify "evil spirits." Contemporary opinion of prominent writers on the same lines may be cited.

The honoured astronomer, mathematician and alchemist, John Dee of Mortlake, who, as confessed in his diary (1581), indulged in crystal-gazing and study of occult matters, living as he did at the height of the witch executions, cannot have doubted that consultation of harmless spirits had not been prohibited by statute, when without fear he wrote: "Having always a great regard and care to beware of the filthy abuse of such as willingly and wittingly did invocate and consult (in divers sort) spiritual creatures of the damned sort." Evidently he believed that the spirits which he fancied presented themselves at his or Kelley's invitation were innocuous and their bidding occasioned no breach of the law.

Flourishing also before the witchcraft persecution faded out was Robert Boyle (1627-1691), the celebrated scientist, who, although a solid supporter of the Church, characterised "consulting the dead" as an "innocent kind of necromancy." It is unthinkable that at the time he wrote, the attempted approach to friendly immaterial beings ranked as a capital felony.

1See an instructive indictment, EWII 286ff.
2Pitcairn, Criminal Trials, i, pt. 2, 242ff. She was found guilty, but enlarged in "ignorant error." (Ibid. 244ff.)
3In this act for the first time, the title also nominated the "evil spirit."
About the same time the Rev. John Pordage (afterwards an associate of Mrs. Lead, the psychic founder of the Philadelphians) being before the Commissioners for ejecting Scandalous Ministers had no anxiety in admitting consultations with spirits.¹

John Aubrey, F.R.S., in 1696, related without any criminal suggestion, that Dr. Richard Napier, physician and astrologer, sometime rector of Lynford (Bucks.), obtained prescriptions by conversing with the angel Raphael.²

It cannot be doubted that in England communion with "good spirits" was not a criminal association and so must have continued.

A weighty statutory innovation of the eighteenth century was the repeal of the acts of 1 (2) Jas. I and Mary.³ The inferences are that the educated and responsible classes in England had ceased to believe in the actuality of associating and communing spirits, or if they did exist, that there was either no harm in summoning them, or no possibility of doing so. The repealing statute of 9 Geo. II, c. 5 was passed to take effect from 24 June 1736, and abolished prosecution of persons (i.e. both principals and consultants) for "witchcraft, sorcery, enchantment, or conjuration, or for charging another with any such offence in any court" in England and Scotland.⁴ Obviously these terms have been chosen to comprehend practices in the past treated as felony, and so classed, without definition, in the two acts repealed.⁵

There is no preamble to the act, but s. 3 shows that the bill as drawn retained none of the former offences, substituting (s.4) pretences⁶ "to such arts and powers as are before mentioned whereby ignorant persons are frequently deluded and defrauded." The only arts "before mentioned" are those in s. 3, which cease to be felonies by the repeals of ss. 1, 2, i.e. "witchcraft, sorcery, enchantment, or conjuration." It cannot be doubted that these terms retained their former values (differing, it seems, in England and Scotland), but their nature remained undefined, and a new era of misconception was ensured.⁷

The letter of the act remained untouched until 1867 when the

¹Cobbett, State Trials, 1819, v. 539-632.
²Miscellaneies, ed. 4, 1857, p. 159.
³The Irish Elizabethan Act was not repealed until 1821.
⁴The full text may be seen in EWH 44f. There had been numerous slander actions, see EWH 270ff.
⁵The construction of the title in 9 Geo. II directly covers the repeals of ss. 1 and 2 and the pretence of s. 4. In the absence of mention otherwise, it is to be supposed that the terms used in the prohibition of s. 3 correspond to those of the repeals.
⁶An earlier reference to "pretence" may be seen opening the preamble to 33 Hen. VIII.
⁷Thirty years later the eminent solicitor-general, Blackstone, commenced publication of his Commentaries wherein he glosses: "pretending skill in occult sciences" (iv. 6). The act gives no warrant for wide interpretation (see s. 4, II. 8-10).
Statute Law Revision Act 30 & 31 Vict. c. 59 repealed s. 1 (repeal of Jas. I) and s. 2 (repeal of Mary). Twenty years later another S.L.R. Act (50 & 51 Vict. c. 59) repealed the title in part and s. 4 as to punishment by pillory. For our own time, 9 Geo. II, c. 5 has, therefore, read as follows:

An Act ... for punishing such Persons as pretend to exercise or use any kind of Witchcraft, Sorcery, Incantation, or Conjuration.¹

³ Be it ... enacted. That from and after the said 24th day of June [1736], no Prosecution, Suit, or Proceeding, shall be commenced or carried on against any Person or Persons for Witchcraft, Sorcery, Incantation, or Conjuration, or for charging another with any such Offence, in any Court whatsoever in Great Britain.

And for the more effectual preventing and punishing of any Pretенees to such Arts or Powers as are before mentioned, whereby ignorant persons are frequently deluded and defrauded; be it further enacted by the Authority aforesaid, That if any Person shall, from and after the said 24th Day of June, pretend to exercise or use any kind of Witchcraft, Sorcery, Incantation, or Conjuration, or undertake to tell Fortunes, or pretend, from his or her Skill or Knowledge in any occult or crafty Science, to discover where or in what Manner any Goods or Chattels, supposed to have been stolen or lost, may be found, every Person, so offending, being thereof lawfully convicted on Indictment or Information in that Part of Great Britain called England, or on Indictment or Libel, in that Part of Great Britain called Scotland, shall, for every such offence, suffer imprisonment by the Space of one whole Year without Bail or Mainprize ... (Further imprisonment until Sureties be given).²

The crux of the statute is the word "pretence," that is failing to produce what has been undertaken in a professional capacity at least as a possibility, but denied by legislators to be a human possibility.³

While "aiders and abettors" (such as sitters at a séance) are no longer mentioned as particeps criminis, and by the repeal of s. 2 consultants in Scotland are likewise given freedom, justice elects to charge them as conspirators.

Until the twentieth century no application of the act has been noticed, various Vagrancy and Larceny laws being found sufficient to check the activities of persons receiving valuable consideration from the public for alleged psychic phenomena. For the present illustration of legal anomalies one of the most illuminating causes arising was Rex v. Duncan and others at the Central Criminal Court, 23-31 March, 2 and 3 Apr. 1944, before the Recorder of London, Sir Gerald Dodson. Helen Duncan, a materialisation medium, and three others, employers and associates, had been holding public séances at the "Master Temple Psychic Centre" (registered as a church), 301 Copnor Road, Portsmouth, and, in particular, on the

¹By 59 & 60 Vict. c. 14 (Short Titles Act, 1896) 9 Geo. II, c. 5, and one hundred earlier statutes were given short titles and so, for convenient use, we get "Witchcraft Act, 1735," but the older title is not abolished.


³In any event it would be useless to plead performance in the face of two policemen who say they were watching, but did not see any phenomenon.
14th, 16th, 17th and 19th January 1944, on which last day two
police representatives paid for admission, and during the red-light
séance switched on a torch to seize Mrs. Duncan and arrest all the
sitters, but failed to secure any incriminating or satisfying proper-
ties.¹ The four defendants severally pleaded "not guilty" to an
indictment of seven counts on the first of which the trial proceeded
(RTD 344) accused being thereby charged that between 1 Dec. 1943
and 19 Jan. 1944 they conspired together . . . to pretend to exercise
or use a kind of conjuration . . . that through the agency of Helen
Duncan spirits of deceased persons should appear . . . and that the
spirits were communicating with living persons then and there
present, contrary to section 4 of The Witchcraft Act, 1735² (RTD 26).
It is to be observed that the prosecution did not make use of the
terms "witchcraft" and "sorcery" either of which (but particularly
the latter) would have covered psychism, although nowadays diffi-
cult to establish.

Prosecuting counsel, J. Maude, K.C., in opening, informed the
jury that "the act had remained in the Statute Book untouched
since the reign of George II, which they might think for a very good
reason."³ One suspects that if the jury (seven persons) pondered
on the age at all they assigned the long life to legal slackness,⁴ but
did not dare to express the truth that the act had never filled any want
and had become too archaic to be serviceable. Maude himself
actually abandons the letter of the law to change the meaning of a
word, "shall" to "may."⁵

Twelve witnesses were called for the prosecution to prove
conjuration, faked ectoplasm, and feigned voices, but the evidence
is little to the purpose and quite unconvincing to one who has experi-

¹For the evidence and speeches verbatim running to nearly 200,000
words, see C. E. Bechhofer Roberts, The Trial of Mrs. Duncan, 1945 (herein-
after cited as RTD); A short popular account, M. Barbanell, The Case of
Helen Duncan, 1945 (hereinafter cited as BCD). Comment by defending

²RTD 26. In the second count all four accused were charged with pret-
tending to exercise or use a kind of conjuration, etc. The 3rd and 4th counts
charged false pretences, and the 5th, 6th and 7th with "effecting a public
mischief." The Recorder, in summing up (RTD 321), says the charge was
not only conspiracy (i.e. count 1) but "specifically pretending," etc. (i.e.
count 2), but according to the later judgment in the Appeal Court (RTD
343, 344) the trial proceeded on count 1 only.

³RTD 27. Actually (as above, p. 7f) parts had been repealed.

⁴As with 23 Eliz. c. 2, which, ceasing to have any force after the death
of the Queen, remained in the Statute Book for a further 260 years! (EWH 18.

⁵According to the statute any person convicted "shall suffer imprison-
ment by the space of one whole year, and that, Maude declared, "of course,
means may" (RTD 28), but he fails to explain how or when the significa-
tion became modified.
enced the remarkable corroboration which can be obtained by police witnesses when determined to secure a conviction. 1

For the defence, C. E. Loseby, in his opening address to the jury, stressed the important argument that there had been no pretence to "conjuración," 2 and since that term, as commonly understood, applied only to "evil spirits" plus elaborate ceremonial, most laymen will agree. The word "sorcery" being neglected by twentieth-century lawyers the prosecution of 1944 depended on "conjuración," and a few additional citations may not be amiss.

Glosses of the 10th and 11th centuries show that conjuratio was an equivalent of conspiratio and had nothing to do with demons. To conjure or constrain a devil or spirit occurs c. 1290: Manie deuelene he conjurede that huy to him wende (South-English Legendary EETS, 1887, I 35/45). Chaucer, 1386, used the word "conjuración" in the sense of "invocation": adjuracion and conjuracion as doon these false enchantours or nigromanciens; bewytched by sum conjuration. Reference may be made to "conjuración" in contemporary legal compendiums such as, for instance Cowell's Interpreter, adopted by Dalton (op. cit.): "It is specially used for such as have personal conference with the Devil or Evil Spirits." According to Les Termes de la Ley, 1641, p. 76. "Conjuration—seemeth by prayers and invocation upon the powerfull name of God to compel the Devill to say or do what hee commandeth."

Conjuration of spirits has been repeatedly described. The principal feature of the ritual is a circle (decorated with appropriate symbols) to ensure safety, usually by keeping out interfering spirits, but sometimes by keeping them in, and these magic rings date at least from Assyrian days. 3 Incantations and fumigations were necessary and mathematical accuracy of the formalities was held by successful practitioners to be essential. 4 While in Scotland also the periphery was customary, 5 exceptionally, christian orison only has been held to be conjuration. 6

The attempt in Rex v. Duncan to establish "conjuración" was

1 Loseby put it to Worth that his statement was a completely untrue account (RTD 69). In Rex v. Hatcher and Little at Cardiff, 3 Nov. 1942, the charge being unlawfully pretending to hold communication with the spirits of dead people, the defending solicitor, Russell John, had no hesitation in accusing the police of "deliberate perjury." (Daily Telegraph, 4 Nov. 1942). It is not suggested here that accusations are proof, but I cannot forget that in 1917 I had experience of an entire police case being fabricated; and was not a lie by defendants in Morris v. Daily Mail, 1942, "fair comment" in Court of Appeal and the House of Lords? 2 RTD 113. 3 For instance, see Éliphas Lévi (Transcendental Magic, Waite, 1896) and for an illustration, EWD frontispiece. Another is in Newes of Scotland . . . 1591. 4 An account of evocation and the circle is given by E. Smedley, The Occult Sciences, 1855, p. 188. 5 Newes of Scotland . . . 1591. 6 In the High Court of Justiciary, Edinburgh, 1591, the prayer in God's name offered up by the "wise woman of Keith," a "healer of sick folks," was regarded as conjuration and a capital felony. For example, see Piteaurn Criminal Trials, i. pt. 2, 230ff.
by similar exploitation and misrepresentation of the simple church prayers and songs rendered, as habitually at séances, "to increase vibration," and the reference in count 1 of the indictment is not to any practice hitherto recorded in England as "conjunction," and could not have been so recognised by the draftsman of 9 Geo. II, c. 5.¹

For the defence one prisoner only spoke, but 44 witnesses, who entered the box, presented Mrs. Duncan as a medium of marvellous power before, after, and at material séances, where a number of them claimed to have recognised, spoken with, and kissed materialised spirits, and to have seen white ectoplasm appear and disappear. One witness² testified to following the form of his deceased mother into the "cabinet" and seeing it "standing in front and to one side of Mrs. Duncan, with only a little white stuff between them." In the present short paper it is not practicable to say more than that, if sworn testimony of responsible persons is of value, the positive statements of the defence overwhelm the negatives of the prosecution.

To balance the evidence of successes other than at material times the police cited a trial in the Sheriff Court at Edinburgh, 11 May 1933, when Mrs. Duncan had been charged with fraudulently obtaining £4 from various persons by pretending to be a medium through whom the spirits of deceased persons were openly materialised, etc. She was convicted and fined £10.³ The allegation that the chief police witness, a "very muscular woman," clutched a "stockinet article," but could not hold on,⁴ may be compared usefully with the evidence of Police-Constable Cross in 1944, who grasped a "sheet," which appeared to be "similar to butter muslin," but it was pulled away,⁵ and these two testimonies may be contrasted with the flat contradictions of several (including three police witnesses, RTD 89, 92, 99), who deposed to seeing the white material disappear at, if not through, the floor, rather remark-

¹In Rex v. Duncan, a police witness and medium, C. R. Burrell, under cross-examination, testified that he had never "conjured up spirits," nor knew any who had. Through him "one spirit from one world can contact or communicate with the spirits of this world." (RTD 84).

²W. J. Williams, 28 March 1944; RTD 183.

³Evidence of A. C. West, RTD 336. Sir J. W. Herries, J.P., who sat in court, believed that an error was made (RTD 287).

⁴RTD 287.

⁵The idea of "butter muslin" seems to have originated with tests by H. Price at his National Laboratory of Psychical Research in 1931, when he photographed faked ectoplasm and exposed the medium (Regurgitation and the Duncan Mediumship, 1931).

⁶RTD 101. Cross claims to have identified the nature of the "sheet" although only "holding it for a moment" (RTD 106) in dim red light.
able behaviour for manufactured fabric, but not an unusual departure for ectoplasm.¹

All over the world pertinent displays in court have been esteemed as "best evidence" and commonly welcomed and allowed, as a few instances will demonstrate.

In England at Warboys in 1593 the Judge by threatening an old man with a verdict of guilty made him recite a dictated charm in court whereupon a child came out of her fit (EWD 126). Sometimes the judge ordered experimental contacts between witch and victims as, for instance, Sir Matthew Hale in 1665 (EWD 349, 351). Some modern examples of court exhibitions are cited by H. Price, Fifty Years of Psychic Research, 1939, p. 221f. At Insterburg, East Prussia, in May 1928, Frau Elsa Gunther-Geffer, clairvoyant, on an appeal by the Public Prosecutor, was tested in court. In trance she described accurately the details of a robbery and so earned an acquittal, the President admitting being dumb-founded. The Governor of Königsberg thereupon proclaimed the employment of mediums by the police. H. Steinschneider, clairvoyant, charged in a court in Czechoslovakia in 1930, was authorised to demonstrate his powers, and so obtained his discharge. It is said that Houdini, professional magician, on one occasion in court was suffered to illustrate an escape from handcuffs (BCD 93). During a fortune-telling case at Hull, about April or May 1944, the magistrate, J. R. Macdonald, offered the accused that if her crystal would discover the amount of the fine proposed he would dismiss the case. The woman, perhaps due to the pervading scepticism not feeling in the humour, refused to try, a logical excuse. The magistrate thereupon most illogically called her "a fake" (BCD 93). In the divorce action, Davidson v. Davidson (Court of Session, Edinburgh, 7 March 1947), the husband was allowed to rebut the wife's statement by proving to the Court that licking red labels would colour lips as well as did lipstick! (Daily Mail, 8 Mar. 1947). And litigants are even permitted to encourage dogs to wag tails before the judge to establish ownership.

A prominent feature of the trial here introduced was the offer of Mrs. Duncan to demonstrate her passive powers to secrete ectoplasm, materialise spirit forms, and transmit the voice of her guide,² but the Recorder rejected the overture.³ Moreover he ruled inapplicable the proposal of the defence to prove by experienced sitters that Mrs. Duncan had exuded ectoplasm a few days before the trial,⁴ notwithstanding that he allowed prosecuting counsel (Elam) in cross-examination to touch on proceedings in another Continent ("Indian rope trick")⁵ and impertinent to the matter

¹Genuine ectoplasm has been repeatedly analysed and photographed. See the references in my Psychic Phenomena in the Witchcraft Cases, 1947, and more fully in numerous text-books.

²RTD 119, 319.

³RTD 142. "The trial must proceed upon the evidence of witnesses relating to matters which have taken place." Later the jury said they did not want to see the test (RTD 305). Upheld by Court of Appeal.

⁴Upheld by Court of Appeal. BCD 132ff. Marylebone Spiritualist Association, 15 March, 1944, where ectoplasm was seen to stream from mouth and nostrils of Mrs. Duncan.

⁵RTD 221.
in issue. Maude, in a brief address to the jury, had little to say, but gave an even more profound example of irrelevancy and waste of time. Was it necessary to quote Shelley’s *Ode to a Skylark* or Browning’s libellous and non-evidential attack on *Sludge, the Medium*, or again, to ask the jury to imagine themselves in the Beyond sitting round Mary, Queen of Scots, with her head on? This kind of oration may sway a jury of poor quality, but in cold print merely incites contempt of the law.

Touching the alleged exudation, the Recorder, in summing up, observed unconvincingly: “If it was ectoplasm, you would not expect to be able to hold it, and, if you could not hold it, I suppose you would not be able to feel it.” Why? He then added “that nobody can explain what an ectoplasm is.” Actually experienced investigators had spoken familiarly of the substance and he himself had interrogated B. K. Kirkby, for twenty years a student of ‘the stuff.’ Moreover, when the defence asked a witness to characterise ectoplasm, he had remarked: “We heard it described this morning” (27 March 1944); and he added that it did not return to Mrs. Duncan, “because it went some other way—there is no question about that,” but the police testimony is not coherent.

The Recorder, without apparent grounds, instructed the jury that “going into a trance and pretending to hold communion with spirits was the kind of conjuration referred to in the statute.” It is now submitted that this dictum indicates failure to divine the intention of the legislators. At no time has trance been associated with conjuration. It is difficult to avoid a further feeling of error and unfairness in the Recorder informing the jury that Mrs. Duncan did not appeal from the judgment of the Sheriff-Substitute in Edinburgh, 1933, and omitting, as the defence pointed out in later proceedings, that there was no facility for so doing.

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1 *BCD* 83f.

2 Can you not feel a live eel without being able to hold it?

8 *RTD* 327. Again “Was there an ectoplasm present?” (*RTD* 144).

4 *RTD* 210. The Recorder’s reasoning seems to be that if you cannot tell what ectoplasm is then it must be butter muslin. This is reminiscent of an address to the jury by Anderson, L.C.J. in 1602, who, turning to the physicians who had been arguing on the nature of a disease, “if you can tell neither cause nor cure, it is not natural” (i.e. it is witchcraft) *EWD* 127.

8 *RTD* 129. Evidently Loseby in his address to the jury (120). See also 154, 212.

*RTD* 327.

5 Worth saw it fall to floor in a little heap; he saw it pulled into the audience; and he saw it pulled into the bay window (*RTD* 52), yet the flimsy material was not stretched (*RTD* 67.)

8 *RTD* 321.

9 *RTD* 333.

8 See below, ground 6d (p. 14).
On the first count, the jury brought in the prisoners guilty of conspiracy to contravene the Witchcraft Act 1735, and were discharged from giving a verdict on the other counts. On 3 April, the Recorder sentencing the prisoners told them that they "had been found guilty of conspiring together to commit an unlawful act, namely, of pretending to recall spirits of deceased persons in a visible and tangible form." Evidently the interpretation of "any kind of conjuration," and here thought to be erroneous as explained (p. 10f). How came the Recorder to fail to comment on police-witness Burrell's assertion that there was no conjuration of conferring spirits? (p. 11n.1). He referred to the proposed demonstration of powers, which he had refused, making some curious comments such as, "if this had taken place and nothing had appeared, Mrs. Duncan would have been condemned even before she had been tried." Actually whether she materialised forms or not at the Old Bailey in April would not have proved what occurred at Portsmouth in March. While success might have biased the jury in her favour, surely failure would have led to the defence submitting that conditions were unsuitable for such a delicate operation calling for harmonious vibrations or special atmospheric conditions. The Recorder branded the proposed trance exhibition as a "reversion to the dark ages" and "to something very akin to trial by ordeal." The supposed simile is not even a "near miss"—a dangerous and often unfamiliar physical activity calling for skill and strength cannot be likened to a passive catalepsy.

Various appeals against conviction and sentence having been entered, in a shelter for protection from "flying bombs," on 8-9 June, the Court of Criminal Appeal (Caldecote, L.C.J., Oliver, J., and Birkett, J.) heard the arguments of counsel. Briefly the eleven grounds stressed were:

(1—3) No offence under the Witchcraft Act 1735. (4—5) Rejection of the evidence of six witnesses calculated to prove that Mrs. Duncan on 15 Mar. 1944 and at all material times was a materialisation medium. (6) The Recorder failed to direct the jury on law and facts (specified a—e), for instance (d) he stressed the failure of Mrs. Duncan to appeal against a previous conviction when in law she had no right. (7) The Recorder refused to allow Counsel to call the prisoner at any time at his discretion. (8—10) No evidence sufficient for conviction, perverse verdict, miscarriage of justice. (11) Evidence of previous conviction wrongly admitted. (RTD 342).

1RTD 336.
2RTD 339.
3Ibid.
4See the Recorder's own ruling above, p. 12n.3
5Believing that manifestations are mental I personally doubt whether the medium would be successful in the presence of incredulous police officers or aggressive investigators.
6RTD 339.
Not only did the judgment read by Caldecote (L.C.J.) throw no light on the difficulties and uncertainties arising from the archaisms of the statute, which had punctuated the court process and the summing up, but a number of the observations of the Lords Justices of Appeal to at least one layman are also either inaccurate, or unwarranted, and further confuse the issue.

The first three grounds brought up whether the Act of 9 Geo. II, c. 5 (In printed versions of the judgment occurring four times wrongly as 2 Geo. II) covered other than "evil and wicked spirits" and the "meaning to be attributed in law to the term 'conjuration'". Neglecting the descriptions "witchcraft" and "sorcery," at one time corresponding to modern "psychism," and running over historical points, the L.C.J. begins with 33 Hen. VIII and by ignoring such restrictive phrases in the statute as "finding money," or "goods stolen," or "unlawful intent or purpose" (see above, p. 4) and "evil and wicked spirits" in the later acts, gives to "conjuration" a weight never hitherto carried in England, and this misrepresentation occurs in the face of a citation of the legal interpretation of the sixteenth century as it appears in the preamble of 5 Eliz. c. 16 (see above p. 5) i.e. "the wicked offences of conjurations and invocations of evil spirits which were made felonies by the statute of Henry."

Further objection must be made to the L.C.J. referring to 1 (2) Jas. I, c. 12 and describing the expression "conjuration of evil and wicked spirits" as a "characteristic example of the attitude of James I to this practice." As a matter of fact neither words nor sentiment are Jacobean at all, for the draftsman of 1604 merely copied the phrase verbatim from the act of 5 Eliz. King James, contrary to popular belief, did not harry mediums, and an excellent example is the latitude accorded to the renowned wizard, Dr. Lambe.4

The ancient meaning of "conjuration" has been exemplified above (p. 10). The defence, in particular, cited the definition given in Cowell's Interpreter, 1672, but the Justices of Appeal expressed doubt on its authority,5 and that "any kind of conjuration" in 9 Geo. II, c. 5. has "the meaning or interpretation given," since "the express alteration from the statute of James I, which is being repealed, and the use of the words 'any kind of conjuration' without reference to spirits, evil or otherwise, would seem to indicate the

3RTD 346. 4RTD 347. 5Ibid.

4Having four spirits "bound to his crystal" he was permitted to carry on his mediumship even when lodged in the King's Bench prison (EWD 204).

5John Cowell (1554-1611) was a distinguished LL.D. whose work was reprinted at intervals covering 120 years (1607-1727). As he lived during the height of the witch persecution he is likely to have had first-hand knowledge of the current use of the terms.
contrary." They err in saying that the words "any kind of" were added, for they merely replaced "any" having the same implication, and the present writer suggests that "any kind of conjuration" signifies no more than "any conjuration" in the three acts of 1542, 1563, and 1604, and if in 9 Geo. II, c. 5 after reciting "conjuration" of those acts it was intended in using the term to embrace other than the usual evil spirits the draftsman should have been specific on the point.

In allusion to "traffic with spirits" in the sixteenth and seventeenth centuries the judges of appeal are also on doubtful ground in stating that "all such spirits were regarded as and were apt to be described as evil spirits." With Roman Catholic obscurantists this might be so, but is far from general treatment (see instances cited above, p. 6-7).

Irrelevant exploitation and even ignorance of the Scriptures are both exemplified in Rex v. Duncan. The Recorder several times unnecessarily interpolated questions about religion; and the Lords Justices gave a pathetic exhibition of toying with excerpts from the Bible, a book with which they were evidently not fully conversant. Unfortunate inspiration by the unreliable Coke resulted in adding second-hand 1 Chron. x, 13, while failing to mention 1 Sam. xxviii, 6, 18, the source and contradiction in some respects. The quotation not furthering any argument the fault is perhaps of lesser magnitude than a suppressio veri, but why cite Coke's unhelpful scripture and omit his considered definition of "witch" with its limitation to "evil spirits"?

Is it not an unjustifiable anomaly that while lawyers, without evidence and with rank superstition, accept the reality of a deity originating in Israelitish legend and permit him to be petitioned and invoked, class attempted communication with humble ghosts as "pretence" worthy of imprisonment, and launch this incongruity in the face of the "familiar spirits" (both) of Leviticus and the story of the "woman of Endor"? Citation of this incident (fact or fiction) would have demonstrated that abnormal psychic manifestations 3,000 years ago being commonplace, belief and attempted approach is not now necessarily fraudulent.

All appeals against conviction and sentence were dismissed. The reasonable hope of the defence to carry the case to the House

1RTD 347. 2RTD 348. 3RTD 347.
4BCD 50.
5Institutes, iii. ch. vi.
6e.g. in Samuel Saul "enquired of the Lord," and in Chron. he "enquired not of the Lord."
7See above, p 5n.4,
8xix, 31. In the OT there are twelve other instances.
91 Sam. xxviii, 7ff.
10RTD 348.
of Lords was frustrated by the Attorney-General refusing the essential fiat—another grievance.

Consideration of the collection of data here passed in review leads to the opinion that the act of 9 Geo. II, c. 5 is an uninterpretable rigmarole wholly inapplicable to modern requirements, and laymen, with astonishment, read that, in the House of Commons, 3 May 1945, the Home Secretary (Morrison) stated that he had been advised “there is no real dubiety about the law.” The statute may be satisfactory to counsel, Recorder, and Lords Justices of Appeal, who have nothing to lose, but legislators might remember that the public have the burden and expense to bear and if the law were made comprehensible to them much litigation and criminal procedure might be avoided.

Quite apart from the question of guilt, not entered into here, the rejection of the appeals accentuates the uneasy feeling of irrelevancy, religious humbug, misinterpretation of the old laws, misrepresentation, omission and resulting injustice, much of which results from hanging on to the ancient writings long since obscure and unserviceable. Is it too much to ask that if this monstrous farrago must be retained that an amending or declaratory act will be passed?

1 BCD 130.
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