

learned Judge, the profession of a skill or knowledge in an occult science within the meaning of sec. 443.

Reference to *Rex v. Marcott* (1901), 2 O.L.R. 105; *Rex v. Monsell* (1916), 35 O.L.R. 336; *Rex v. Stephenson* (1904), 68 J.P. 524; *Davis v. Curry*, [1918] 1 K.B. 109; *Regina v. Entwistle*, [1899] 1 Q.B. 846; and other cases.

The word "pretends," in the Witchcraft Act of 1736 and in sec. 443 of the Criminal Code, is used in the sense of "professes" or "claims" or "undertakes."

By the use of the words "pretends, from his skill or knowledge in any occult or crafty science, to discover," Parliament intended to make it unlawful for any person, whether he really possessed any such skill or knowledge (assuming it to be possible to possess it) or honestly believed that he possessed it (whether possible to possess it or not), or dishonestly professed to possess it, to claim to be able to discover where any lost or stolen goods might be found.

There is no law to prevent the defendant from communing with departed spirits, but the Criminal Code says that she shall not profess with their aid to be able to discover lost or stolen property.

The learned County Court Judge rightly found the accused guilty of the offence charged, and both questions in the stated case should be answered in the affirmative.

In view of the novelty of the offence and the evident good faith of the accused, the suggestion that sentence might be suspended, upon the accused entering into the usual recognizances, might well be carried out.

*Conviction affirmed.*

---

FIRST DIVISIONAL COURT.

JUNE 11TH, 1920.

\*FOSTER v. BROWN.

*Land—Excavation in—Withdrawal of Lateral Support from Land of Neighbour—Failure to Maintain Retaining Wall—Subsidence of Neighbour's Land—Liability of Owner Acquiring Land after Excavation Made.*

Appeal by the plaintiff from the judgment of the County Court of the County of York dismissing the action as against the defendant Albert E. Brown.

The action was brought in the County Court against Walter J. Brown and Albert E. Brown for damages for injury to the