Fraud, Vagrancy and the “Pretended” Exercise of Supernatural Powers

By Danielle Boaz

With the passage of the Witchcraft Act of 1735, Britain outlawed domestic prosecutions for the actual practice of witchcraft, and instead prohibited the “pretended” use of “witchcraft, sorcery, enchantment [sic], or conjuration,” as well as fortunetelling and the employ of “occult or crafty science” to discover lost or stolen goods.¹ From the late sixteenth century to the mid twentieth century, Britain’s vagrancy laws also proscribed certain supernatural practices, such as fortunetelling, palmistry, and physiognomy.² In the mid to late nineteenth century, British colonies in Africa and the Caribbean passed similar laws prohibiting the “pretended” practice of witchcraft or obeah, frequently using the exact same wording as English witchcraft or vagrancy laws. Scholars have previously noted the similarities between English witchcraft and vagrancy laws and obeah laws in the Caribbean; they have also argued that witchcraft laws in colonial Africa were based upon British views about supernatural practices in the nineteenth and twentieth centuries.³ Therefore, in this paper, I compare the enforcement of these provisions prohibiting the “pretended” use of supernatural powers in Britain, Jamaica, and South Africa, to analyze the extent to which colonial laws against African medico-religious practices were merely an extension of Britain’s domestic policies.

Despite the relative uniformity of the language prohibiting the “pretended” use of supernatural powers in British, African, and Caribbean statutes, inconsistent interpretations of what rituals contravened them resulted in distinctions in how these laws were implemented. In Britain, while prosecutions for violations of the Witchcraft Act were rare, the sections of the Vagrancy Law proscribing fortunetelling or palmistry were regularly enforced against “gypsies” and, starting in the late nineteenth century, spiritualist mediums. However, the prosecutions of the latter created a decades-long debate in English appellate courts about how and whether vagrancy laws should be applied to individuals who believed in their own purported powers.

In the post-emancipation Caribbean, as in Britain, legislators implemented two overlapping sets of laws regarding the “pretended” use of supernatural powers—vagrancy and obeah statutes. By the mid-nineteenth century there was little in the text of these laws to distinguish the crime of practicing obeah from that of vagrancy, however, arresting officers favored the latter because violators could be sentenced to longer terms of imprisonment and corporal punishment. In contrast to England, judges in the Caribbean never debated whether intent to deceive was necessary to violate obeah and vagrancy laws. Instead, magistrates consistently assumed that obeah practitioners did not believe in their own purported power and, upon conviction, often lectured them about duping and defrauding the population. However, through increasingly common arrests secured with police traps and complainants who did not believe in a practitioner’s alleged supernatural power, Caribbean obeah cases centered on demonstrating that the accused aimed to receive compensation for her/his ritual practices, not that she/he intended to defraud someone.
In Africa, on the other hand, although colonial laws used similar language to British and Caribbean witchcraft, obeah, and vagrancy laws, these statutes typically classified the “pretended” practice of witchcraft as a type of theft by false pretenses. This was a crime against another individual and required specific proof of both the defendant’s intent to defraud and the client’s belief in the efficacy of the defendant’s ritual practices. In contrast to the Caribbean, where fraud was assumed in nearly every case, appellate judges in Southern Africa frequently overturned lower court convictions because the evidence suggested that priests and diviners believed in the effectiveness of their rituals.

**Witchcraft and Vagrancy Laws in England**

Prosecutions for violations of England’s Witchcraft Act of 1735 were extremely rare from the time it went into effect in 1736 to its repeal in 1951. England’s vagrancy laws, on the other hand, were regularly enforced against fortunetellers and other practitioners of “occult sciences” for hundreds of years. The earliest provisions in English vagrancy laws related to the purported use of supernatural powers, which were passed by the late sixteenth century, were designed to suppress the fortunetelling practices of “gypsies,” who were described by authorities as charlatans and, sometimes, outright thieves. Later in the nineteenth century, the application of vagrancy laws to astrologers and spiritualists sparked intense discussions about the purpose of laws related to supernatural practices. After decades of debate, British appellate courts decided that legislators enacted witchcraft and vagrancy laws to suppress the “pretended” use of supernatural powers as threats to public morality and order. Although legislators
described occult practitioners as individuals who had the “intent to deceive,” proof of fraud was not required to secure a conviction for violations of these statutes.

Although the Witchcraft Act of 1735 categorized any professed use of supernatural powers or knowledge as “pretended,” this law did not represent the end of popular belief in witchcraft in England. Well into the nineteenth century, many people in Britain continued to assert that they had been bewitched; however, they could no longer litigate accusations of witchcraft in English courts. Therefore, they resorted to other solutions, such as asking ministers to “cure” them of witchcraft, or committing physical violence against a suspected witch. It was rare for individuals to complain to the authorities that someone had violated the Witchcraft Act and the government did not actively seek to enforce the law. Initially, this was most likely because “the break with their witch-believing past was still too recent for many members of the elite to examine the popular belief in witchcraft with detached circumspection.” Later, by the early twentieth century, some judges viewed this law as antiquated and questioned whether charges of “witchcraft” were appropriate for individuals engaged in palmistry and crystal gazing, which were common supernatural practice at this time.

The Vagrancy Act of 1824, on the other hand, was the subject of much discussion in England’s appellate courts in the nineteenth century and early twentieth century.

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6 Davies, *Witchcraft, Magic and Culture*, 76-77.

Vagrancy legislation has been present in England for hundreds of years. Although these statutes typically had multiple dimensions, the central purpose of vagrancy ordinances was to create an obligation to work. These compulsory labor laws were first enacted in England, as in many parts of Europe, in the fourteenth and fifteenth centuries after the Great Plague decimated the population and created labor shortages. However, in the sixteenth and seventeenth centuries, the purpose of labor and vagrancy laws began to change. Once the population recovered from the Great Plague, labor statutes no longer merely coerced able-bodied, unemployed individuals into working; they also began to regulate the quality of work a person provided and the type of employment that was permitted.

Since at least 1597, British vagrancy laws consistently prohibited a person from claiming “to have knowledge in physiognomie [sic], palmistry, or other like crafty science, or pretending that they can tell destinies, fortunes, or such other like fantastical imagination…” This component of the vagrancy laws did not change much from the late sixteenth century until 1824, when the Vagrancy Act that was reproduced in many of Britain’s Caribbean colonies went into effect. At this time, the law continued to expressly prohibit fortunetelling, palmistry, or other “crafts” but added a clause that proscribed the use of these practices “to deceive or impose upon his majesty’s subjects.”

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9 Ibid., 36.

10 Ibid. 45-51.


of this language about deception became a very contested issue in England from the 1870s to the 1940s.

Through at least the mid-nineteenth century, the sections of vagrancy laws prohibiting fortunetelling appear to have been primarily enforced against “gypsies,” a term which was applied to a variety of people, particularly groups of women and children who travelled throughout the countryside and did not engage in the conventional forms of employment such as agricultural or industrial labor.13 In the nineteenth century, many people described “gypsies” as beggars and frauds, and accused them of duping poor, uneducated people with their “pretended” clairvoyance.14 They were also often charged with outright theft, such as using their fortune-telling sessions as a distraction to pickpocket their clients.15 Some anti-“gypsy” activists argued that their way of life was infectious and that, if not suppressed, they would encourage others to abandon their hard-working attitude.16

The Society for the Protection of Vice formed in 1802, in part, supposedly to safeguard the “superstitious” individuals who had been duped or robbed by “gypsies” and other occult practitioners.17 The Society claimed that many clients were too scared or embarrassed to testify against fortunetellers, so the members employed undercover informants to pretend to consult them, pay them with marked coins, and report their

15 Ibid.
17 Davis, Witchcraft, Magic and Culture, 57.
activities to the police.\textsuperscript{18} By the 1840s and 1850s, there appears to have been a major surge in the prosecution of fortunetellers and other ritual practitioners.\textsuperscript{19} English court records suggest that the arrest of “gypsies” for vagrancy was not particularly contested as few people, if any, appealed such convictions. Prosecutions of “gypsies” for fortunetelling, palmistry, and other violations of vagrancy laws continued into the twentieth century.\textsuperscript{20}

However, British appellate courts really began to analyze the meaning and boundaries of vagrancy laws in the late nineteenth century, after the spiritualism movement became popular. One of the central practices of spiritualism was communication with the spirits of the dead and, in England, women emerged as the primary mediums of this practice.\textsuperscript{21} Spiritualists immediately contested the application of the vagrancy laws to their practices, asserting in an 1877 case against one of their mediums that “the Vagrant Act was intended to apply to gipsies [sic] and other wandering and homeless vagabonds,” and the activities of spiritualists did not violate this statute.\textsuperscript{22} Their pleas were mostly unsuccessful; however, British appellate courts began to debate the appropriate applications of this law, giving specific attention to whether it was necessary to prove “intent to deceive” in order to convict an individual of violating the Vagrancy Act of 1824.

\textsuperscript{18} Ibid.  
\textsuperscript{19} Ibid.  
\textsuperscript{20} David Mayall, \textit{English Gypsies and State Policies} (Hatfield, UK: University of Hertfordshire Press, 1995), 56.  
\textsuperscript{21} Alex Owen, \textit{The Darkened Room: Women, Power and Spiritualism in Late Victorian England} (Philadelphia, University of Pennsylvania Press, 1990), 1.  
\textsuperscript{22} Monck v. Hilton (1877), 2 Ex. D. 268.
Ten years later an individual who claimed that he could forecast a person’s future based on a date of birth contested the application of vagrancy laws to his practices, which he described as the “science” of astrology. Rather than arguing, as spiritualists had done, that vagrancy laws were only intended to apply to “gypsies” and similar practitioners, the accused asserted that he had not violated the Vagrancy Act because he did not have the intent to deceive his clients. At this time, the appellate court did not address the question of whether intent to deceive was required to prosecute an individual for vagrancy, but instead questioned the reasonableness of the defendant’s assertion that he believed in his own practices. They argued that “in these days of advanced knowledge” the defendant could not have believed that he could tell someone’s future by knowing when he/she was born and the position of the stars at that time. The appellate judges contended that “[n]o person who was not a lunatic could believe he possessed such power. There was, therefore, no need on the part of the prosecution to negate his belief in such power or capacity.”

Debates about the vagrancy law resumed in the 1910s and 1920s, when the prosecution of spiritualists increased exponentially. England, like other European countries, was devastated by World War I, and bereaved individuals sought to communicate with their deceased loved ones through mediums. As their popularity increased, the authorities arrested more spiritualist mediums, supposedly out of fear that they were exploiting the grief and credulity of others to make money. Regional and

24 Ibid.
national spiritualist organizations formed several legal defense funds to support individuals who had been charged with violating vagrancy or witchcraft laws.\textsuperscript{26}

Spiritualists also began to fight for the amendment of these statutes; however, rather than seeking the complete abolition of laws against the purported exercise of supernatural powers, they lobbied for provisions that would exclude them from prosecution while continuing to prohibit other methods of fortunetelling.\textsuperscript{27}

Therefore, in the 1910s and 1920s, British appellate courts heard several appeals on the application of vagrancy laws to spiritualists. In the first, \textit{Davis v. Curry}, decided in 1918, the court seemed to have relaxed its position from the late nineteenth century.\textsuperscript{28} It overturned the conviction of Mary Davis, a “Spiritualist Medium,” and clairvoyant, who testified to the court that her entire life she had been “possessed with supernormal qualities,” and claimed “by holding an article I can see the creative thought of the person to whom it belongs if they are strong enough to create a picture that registers itself in some cosmic ether.”\textsuperscript{29} The appellate court ruled that if something is done “with an honest belief in the possession of power to do them, and with no intention of deceiving any one, then the magistrate ought to acquit.”\textsuperscript{30}

However, a mere four years later, in \textit{Stonehouse v. Masson}, five appellate justices unanimously reversed the opinion in \textit{Curry}, and held that it was irrelevant whether

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\textsuperscript{26} Ibid., 156.
\textsuperscript{27} Davies, \textit{Witchcraft, Magic, and Culture}, 71-72.
\textsuperscript{28} Davis v. Curry (1918), 1 K.B. 109.
\textsuperscript{29} Ibid.
\textsuperscript{30} Ibid.
\end{flushleft}
someone convicted of vagrancy intended to deceive her/his client.\textsuperscript{31} Masson’s defense counsel argued, based on \textit{Curry}, that her conviction for fortunetelling should be overturned because Masson genuinely believed that she had the gift of “second sight” and the ability to communicate with spirits. The court ruled that the vagrancy laws in England did not require the prosecution to demonstrate that the accused intentionally committed fraud. They based their opinion on the observation that from the earliest English law prohibiting fortunetelling, passed in 1597, to the last revision before the 1824 statute, there was no statutory requirement that the accused have “intent to deceive.” The Justices became convinced that the legislature viewed fortunetelling and palmistry as “mischievous nonsense,” “which in itself is done to deceive…”\textsuperscript{32} Justice Lawrence added, in spite of the defendant’s claims that she believed in her own purported abilities, “I cannot imagine anybody holding himself out to tell fortunes for money who does not perfectly well know that he is deceiving and that he intends to deceive.”\textsuperscript{33}

Approximately twenty years later, in a rare appeal of a prosecution for a violation of the Witchcraft Act of 1735, the court confirmed that this law could also be used to prosecute spiritualist mediums, whether or not they believed in the efficacy of their practices. In 1944, Victorian Helen Duncan and three other spiritualist mediums were convicted of the “pretended” practice of conjuration when they performed a séance to contact the spirits of deceased individuals.\textsuperscript{34} Duncan offered to provide an in-court

\begin{footnotes}
\item\textsuperscript{31} Stonehouse v. Masson (1921), 2 K.B. 818.
\item\textsuperscript{32} Ibid.
\item\textsuperscript{33} Ibid.
\item\textsuperscript{34} Rex v. Duncan and Others (1944), K.B. 713.
\end{footnotes}
demonstration of her abilities, in an effort to prove that she had not pretended to practice conjuration because her abilities were real. The magistrate refused to allow the demonstration, and the appellate court affirmed his decision, stating that this display may have just confused the jury. In upholding Duncan’s conviction, the court seemed to be stating that it was irrelevant whether or not the defendant believed that such conjurations were possible, as Duncan likely did since she offered to provide an in-court demonstration. The appellate judges stated that

the only matter for the jury was whether there was a pretence or not. The prosecution did not seek to prove that spirits of deceased persons could not be called forth or materialized or embodied in a particular form. Their task was much more limited and prosaic. It was to prove, if they could, that the appellants had been guilty of conspiring to pretend that they could do these things.35

One might assume that the use of the term “pretend” meant that the court believed that the defendant intended to commit fraud however as the Witchcraft Act criminalized the “pretended” use of witchcraft, sorcery or conjuration, the court would have had to use this same terminology to describe the charge. Therefore, the court’s interpretation of the Witchcraft Act in this case was consistent with its analysis of the Vagrancy Act; they ruled that merely claiming to possess supernatural powers was an offense, regardless of whether or not the defendant did so with the intent to deceive someone.

To understand the late nineteenth and early twentieth century interpretations of the Witchcraft Act of 1735 and the Vagrancy Act of 1824, one must recall that vagrancy laws were about the regulation of labor, supposedly in the interest of public order and morality. Therefore, the court’s conclusion that the intent to deceive was not required for

35 Ibid.
a conviction was premised on the idea that the Vagrancy Act criminalized fortunetelling, palmistry, and other practices classified as “occult sciences,” not because a particular person might be duped but rather because these practices were, in and of themselves, believed to be harmful to society. Based on the ruling in Rex v. Duncan, it appears that the courts viewed the Witchcraft Act of 1735, which by this time was rarely enforced, as also prohibiting the purported use of witchcraft or sorcery as a means of supposedly protecting public order.

However, the Duncan case obtained widespread media attention and some people began to object that spiritualist mediums were unfairly targeted. For instance, just one year after the Duncan decision, B. Abdy Collins wrote a law review article about spiritualism in England and claimed the case had “caused no little uneasiness to those who are interested in civil liberties and particularly religious freedom.” He noted that the vagrancy law prohibited prostitution, thievery, begging and housebreaking, and contended, “[t]o charge respectable men and women, many of whom are in effect ministers of religion under an act of this kind seems most undesirable as well as unnecessary.”

Legislators responded to such concerns by passing the Fraudulent Mediums Act of 1951, which repealed the Witchcraft Act of 1735 and the provisions of the Vagrancy Act of 1824 dealing with purported supernatural powers. The statute states it is intended “for the punishment of persons who fraudulently purport to act as spiritualistic mediums

37 Ibid., 162.
or to exercise powers of telepathy, clairvoyance or other similar powers.\textsuperscript{38} This law is only violated if an individual has an “intent to deceive” or “uses any fraudulent device” and receives a reward for his or her services.\textsuperscript{39} Through the passage of this law, England redesigned restrictions on fortunetelling and related practices as crimes against a specific individual that require fraudulent intent, instead of general offenses against public order and morality, regardless of intent.

\textbf{Vagrancy and Obeah in Jamaica}

Like vagrancy laws in England, Caribbean obeah statutes developed out of the government’s desire to compel the lower classes to perform certain types of labor. When one examines the statutory language of witchcraft, obeah, and vagrancy laws, those in the Caribbean appear to have evolved in a similar pattern to those in Britain in the mid-eighteenth century to the nineteenth century. Britain’s Witchcraft Act of 1735 and Vagrancy Ordinance of 1824 seemed to denote legislative concerns that fortunetellers and other ritual practitioners defrauded the population and threatened public morality; starting in the 1840s and 1850s, Caribbean obeah and vagrancy statutes suggested similar apprehensions. However, when one dissects the legislation more closely and examines patterns in prosecutions, it becomes apparent that while colonial authorities in the Caribbean frequently discussed the supposed charlatanism of obeah practitioners, their primary focus remained the constraint of labor.

\textsuperscript{38} Fraudulent Mediums Act, 14 & 15 Geo. 6, 1951.
\textsuperscript{39} Ibid.
One could argue that since the passage of the first obeah legislation in 1760, these statutes were closely linked to labor concerns. The earliest obeah laws prohibited African ritual practices that might threaten colonial control of slave labor, such as the administration of sacred oaths and the distribution of protective charms to individuals engaged in insurrections. After the abolition of slavery, obeah laws and prosecutions evolved to reflect new colonial interests in controlling the labor of freedmen.

In the early nineteenth century, the colony’s primary revenues continued to come from the production and export of sugar.40 However, Jamaica’s economic sustainability became tenuous with the abolition of slavery in British Caribbean colonies in 1834. Former slave owners feared that labor shortages would result from emancipation.41 The system of apprenticeship that followed emancipation was designed to appease these planters. However, after the British Parliament terminated apprenticeship in 1838, plantation owners and Caribbean officials argued that it was necessary to use force to bind Africans to the plantations because blacks were idle and had a natural aversion to work.42

One of the plans that most planters supported was the importation of new laborers from Africa and India as indentured servants, to both replace the labor of free blacks and


to reduce their bargaining power regarding wages, hours and work conditions.\textsuperscript{43} Indentured servants began to travel to Jamaica in 1834; by 1867, 11,391 had arrived from Africa and by 1918, 36,412 had landed from India.\textsuperscript{44} The introduction of indentured laborers into Jamaica made things more difficult for the formerly enslaved, who were already struggling to find work in a rapidly changing economy. Immediately after emancipation, competition from slave-labor plantations in Brazil and Cuba threatened the profitability of Jamaican sugar production.\textsuperscript{45} Additionally, in 1846, the English Parliament passed the Sugar Duties Act which terminated import tax preferences for British Caribbean colonies. By 1854, nearly half of the sugar plantations in Jamaica had gone out of business.\textsuperscript{46} In the early twentieth century, sugar exports were reduced to less than one fourth of what they had been in the years immediately before emancipation.\textsuperscript{47} Historian Nigel Bolland argues that an economic depression and the decline in British Caribbean sugar industry, “increased unemployment, lowered wages and heightened suffering” in the region.\textsuperscript{48} In addition to labor woes, Jamaica suffered major periods of drought and famine, accompanied by outbreaks of diseases like smallpox, measles, and cholera, which killed tens of thousands of people in the 1840s and 1850s.\textsuperscript{49}

\textsuperscript{44} Ibid., 59-60.
\textsuperscript{45} William Green, “The West Indies and Indentured Labour Migration,” introduction.
\textsuperscript{46} Ibid., 26.
\textsuperscript{47} William Green, “The West Indies and Indentured Labour Migration,” 2.
It was during this tumultuous post-emancipation period that myalism emerged in Jamaica. Myalism was a spiritual movement designed, in part, to combat the disease, drought, and famine in Jamaica that members interpreted as the product of malefic supernatural practices described as “obeah,” or “witchcraft.” Myalists preached and performed public rituals, as well as organized work strikes that disrupted plantation life and resulted in confrontations between the myalists and the police, whom the plantation owners had summoned to break up their meetings.\footnote{Ibid., 73.} Part of the reason that myalism was suppressed was that authorities viewed practitioners as frauds who provided improper medical care; however, the prosecution of these healers was also closely connected to labor problems in Jamaica at this time. First and foremost, numerous contemporary observers described how myalists stormed onto plantations and disrupted the work with their rituals and encouraged others to abandon their labor and join the procession as they moved to other regions.\footnote{See Periodical Accounts Relating to the Missions of the Church of the United Brethren, Established Among the Heathen, vol. 16 (London: W.M’Dowall, 1841), 302-308, 409-410. Thomas Holt, The Problem of Freedom, 189.} Additionally, and rather ironically, indentured laborers who were brought to the Caribbean to replace the supposedly lazy freedmen and women on plantations were blamed for the rise of the myalism movement. Missionaries, who had lobbied intensely for abolition and worked diligently to “civilize” newly freed black women and men, claimed African immigrants revived practices that had been abandoned by blacks instructed in Christianity and had been “long suppressed but never eradicated.”\footnote{Hope Masterton Waddell, Twenty-Nine Years in the West Indies and Central Africa: A Review of Missionary Work and Adventure, 1829-1858 (London: T. Nelson and Sons, 1863), 188.}
In addition to blaming African indentured laborers for the myalism movement, by the end of the nineteenth century, some colonial residents also complained that the importation of Indian indentured laborers was not remedying the supposed labor shortage in the Caribbean. Indians sometimes deserted their plantations, because of poor labor conditions or in order to find better work.53 Many Indians in British Guiana and Trinidad were prosecuted for violating colonial laws related to desertion, vagrancy, or insufficient work.54 In Jamaica, Indians reportedly sought and provided ritual services in violation of obeah and vagrancy laws. In fact, in 1890 a major Jamaican newspaper reported that Indians had not only entered the realm of practicing obeah but were the best known obeah men, although they had “certainly never heard of” it before arriving in the British Caribbean.55

Newspaper accounts of obeah prosecutions as well as criminal court records confirm that Indians were regularly arrested for violating obeah laws in Jamaica. The earliest documentation I have found of Indians prosecuted for violating obeah statutes was in 1892, when the Governor of Jamaica sent a report to the Colonial Office about the obeah and myalism cases heard by Jamaican courts between 1887 and 1892.56 This report contained the names of the ninety-two individuals prosecuted for practicing obeah or myalism during this five year period, and in parenthesis behind six of the names it says “cooly,” a derogatory term that British colonists used for Indians in the Caribbean. These

54 Ibid., 240.
cases continued well into the twentieth century, and the exchange of services appears to have taken many forms. Sometimes Indians consulted Afro-Jamaicans, at other times they consulted other Indians for their ritual needs; however colonial authorities prosecuted all of these individuals for violating obeah laws.\

The joint participation of Indians and Africans in spiritual practices in the Caribbean was not isolated to Jamaica. In his examination of orisha religion in Trinidad, James Houk observed that “both Africans and Indians have experienced a general feeling of oppression… so that Indians began to consult African spirit men, or ‘Obeahmen,’ in times of sickness or spiritual need, and Africans began to open up to Hinduism as well.” Similarly, John Campbell argues that Indians introduced commercial chiromancy or palm-reading to British Guyana. He further contends that some Hindu priests practiced obeah for Hindu and non-Hindu clients, including performing rituals to help them win court cases.

Prosecutions for obeah practices were not only common among indentured laborers; colonial authorities also blamed other migrant laborers for engaging in ritual practices rather than finding “legitimate” work. In the early twentieth century, intra-Caribbean migration was very frequent and was driven by the hope of better labor conditions and wages. From the beginning of its construction in 1881 until thirty years

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59 John Campbell, Obeah: Yes or No? A Study of Obeah and Spiritualism in Guyana (n.p., 1976), 5
60 Ibid., 14-15.
later in 1911, about 43,000 Jamaicans emigrated to work on the Panama Canal.\textsuperscript{61} Similarly, between 1900 and 1913 around 20,000 Jamaican laborers traveled to Costa Rica, primarily to work on United Fruit Company plantations.\textsuperscript{62}

Avi Chomsky has examined the importance of two obeah practitioners in organizing a strike of the Jamaican Artists and Laborers Union against United Fruit Company (UFC) in Costa Rica in 1910.\textsuperscript{63} The Union demanded that UFC recognize the Jamaican Emancipation Day as a holiday and in response, the Company summarily fired six hundred Jamaicans. To replace these workers, the Company sent recruiters to St. Kitts. Once those laborers arrived, however, they refused to work because they were paid substantially less than the Jamaican workers. Both groups began to strike, led by two “obeah men” named Charles Ferguson and J. Washington Sterling. Both men were prosecuted for their roles in organizing the strike, and Sterling was also arrested for practicing medicine without a license for attempting to establish a pharmacy and performing non-conventional methods of healing. Ferguson and Sterling were convicted on these charges and deported from Costa Rica.\textsuperscript{64}

Similarly, in the early twentieth century, individuals who had recently arrived in Jamaica from Panama, Cuba and other regions, either as immigrants or migrant laborers returning from working abroad, were frequently prosecuted for practicing obeah. In fact, in 1915, there appears to have been a surge of immigrants or returnees who were engaged

\textsuperscript{61} William Green, “The West Indies and Indentured Labour Migration,” 32.


\textsuperscript{63} Ibid., 837-55.

\textsuperscript{64} Ibid, 845.
in practices classified as obeah. In May of that year, Elvin Spencer, who had arrived “some time ago” from Panama was convicted of practicing obeah and sentenced to twelve months imprisonment and eighteen lashes. The magistrate told Spencer that he should have remained in Panama. He also observed that obeah practitioners were no longer “the old Africans” but were instead “you fellows who come here and want money.”65

Less than one month later, William Fenton was arrested for practicing obeah based on the testimony of several individuals who claimed that Fenton had offered them various services to increase their luck in love and business.66 At trial, one of the witnesses testified that he knew nothing of Fenton’s obeah practices in Jamaica but that he knew Fenton from years that the witness had spent abroad in Panama. He claimed that Fenton practiced obeah in Panama and had been arrested several times there. Fenton confirmed that he was only in Jamaica for a short vacation and that he intended to return to Panama immediately. The magistrate told Fenton that he would have to remain in Jamaica for a while because he was sentencing him to twelve months imprisonment and eighteen lashes.

In addition to the prosecution of indentured workers, immigrants, and return migrants for practicing obeah, colonial authorities also connected obeah to labor and employment disputes when they frequently asserted that obeah practitioners were lazy individuals who made their living by committing fraud. The clearest testament to this

65 “Obeah Charge: How Elvin Spencer was Trapped and Caught by the Police,” The Daily Gleaner May 21, 1915.
perception was the inclusion of the practice of obeah as a crime in Caribbean vagrancy laws in the 1840s and 1850s because these laws were designed to punish people for what authorities perceived as idleness. Moreover, legislators proscribed the practice of obeah “for gain” starting in the 1860s, which differentiated these laws from England’s 1735 witchcraft statute by emphasizing the criminalization of “pretended” supernatural practices for compensation.\(^{67}\)

Furthermore, in the late nineteenth and early twentieth century, numerous Caribbean commentators described how obeah practitioners supposedly made a substantial living with their ritual practices. For instance, the author of an article published in the Jamaican newspaper The Gleaner in 1890 argued that “young, stalwart, athletic fellows set up as obeahmen, for no other purpose than to make money…”\(^{68}\) He went on to explain why he believed obeah practitioners continued to thrive in Jamaica, asserting “There are thousands of blacks in America. Do they practice obeah? We think not; and it is because they must work there or starve.”\(^{69}\) Magistrates also frequently emphasized the difference between “legitimate work” and obeah. For example, one judge stated that an accused was “prowling about intending to make a living off of deceiving people” but thankfully he was before the court and could be brought to justice.\(^{70}\) Another magistrate argued that people who pretended to have supernatural powers were preying


\(^{68}\) “The Land We Live In,” The Daily Gleaner, Nov. 15, 1890.

\(^{69}\) Ibid.

on hard-working people. He said that he intentionally imposed harsh sentences on obeah practitioners, attempting to deter others from committing these acts.\textsuperscript{71}

Given the characterization of obeah practitioners as charlatans engaged in illegitimate employment, it is ironic that contemporary sources such as newspaper accounts and court records suggest that obeah practitioners in Jamaica were often people who had special difficulty finding lawful employment. Many colonial descriptions of obeah practitioners indicated that they were often elderly men. For example, writing about obeah practitioners in the mid-nineteenth century, Captain Mayne Reid stated that “universally they were persons of advanced age and hideous aspect…”\textsuperscript{72} In 1893, a newspaper account of the trial and punishment of an obeah practitioner named Shelley questioned whether he could survive the thirty-six lashes that he had been sentenced to because of his old age.\textsuperscript{73} Other newspaper stories about obeah practitioners simply referred to them as “an elderly negro,”\textsuperscript{74} “a grey haired old man,”\textsuperscript{75} and “old and feeble, hardly able to keep himself together.”\textsuperscript{76}

Obeah practitioners in Jamaica were also frequently infirm or disabled. In 1872, George Watson and Henry McLeod were found guilty of practicing obeah for performing a ritual to remove obeah from Henry Bagster, who complained that he felt something crawling around inside him. While Watson received a sentence of six months


\textsuperscript{72} Mayne Reid, \textit{The Maroon} (London: Hurst and Blackett, 1862), 17.

\textsuperscript{73} “Current Items,” \textit{The Daily Gleaner}, December 1, 1893.

\textsuperscript{74} “An Obeahman Convicted: A Salutory Sentence,” \textit{The Daily Gleaner}, December 17, 1896.

\textsuperscript{75} “May Pen R.M. Court: Obeah Cases,” \textit{The Daily Gleaner}, April 28, 1899.

\textsuperscript{76} “Another Case of Obeahism,” \textit{The Daily Gleaner}, May 31, 1906.
imprisonment and twenty lashes, McLeod was sentenced to a longer term of imprisonment, twelve months, but did not receive lashes because he had a heart condition. However, when Walter William Christian was convicted of practicing obeah in August of 1915, he received no sympathy from the magistrate for his cork leg that had replaced a limb he lost working for the United Fruit Company in Costa Rica. Christian was sentenced to twelve months imprisonment with hard labor despite his infirmity.

A few scholars have tried to explain the age and infirmity of obeah practitioners. Orlando Patterson argues that “people accused of obeah were in the great majority of cases poor, abused, uncared for, often sick with yaws, and isolated…. To the young, they represented the fear of growing old under a system which had no use for old people; to the healthy, they represented the fear of falling ill, especially with the yaws which was the most dreaded and horrible disease among the slaves…” Monica Schuler had a different opinion, arguing that younger people may have made obeah accusations against the elderly as a means of “self-promotion.” However, one must consider that due to their age and physical impairments, these individuals may have engaged in spiritual work because they likely would have had the most difficult time getting jobs on plantations. Consider the case of John Daily, who was found guilty of practicing obeah in Port

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77 “Circuit Court,” The Daily Gleaner, July 11, 1872; The Queen against George Watson and Henry McLeod, 11 Apr. 1872, Jamaica Archives, St. Mary Parish Circuit Court Records, 1A/5/1(7).


80 Schuler does not explain this concept of “self-promotion.” Presumably, she is arguing that if the elderly held a position of authority and respect in the community then young men may have accused them of practicing obeah to remove some of that power from the older generation and take leadership roles for themselves. Schuler, “Myalism and the African Religious Tradition in Jamaica,” 73.
Antonio, Jamaica in 1915. Magistrate R.T. Orpen gave him a light sentence of five months imprisonment because Dailey was crippled and “otherwise unwell.” Although it is unclear whether Orpen made this direct correlation to Dailey’s infirmity, he also noted that the increase in obeah practice was most likely a response to rising unemployment, which had led people to seek money through “unfair means.”

The type of rituals that obeah practitioners were arrested for performing in the late nineteenth century and early twentieth century further demonstrates that the criminalization of obeah was intricately intertwined with labor disputes. While judges and other officials were complaining that ritual specialists were not engaged in legitimate forms employment, obeah practitioners were often arrested in Jamaica for performing rituals to help individuals seeking to obtain a job or improve their business. For example, in 1906, Sydney Green entered a coffee shop and talked with the owner, Alfred Clarke, about how his business was going. Green told Clarke the shop was not thriving because Clarke’s own wife had set two ghosts upon him. He made an appointment with Clarke to perform the ritual to remove these ghosts. Instead, Clarke reported Green to the police and Clarke was arrested. Then, in 1909, William August Bruce was convicted on charges of practicing obeah when he offered to remove the duppies that he claimed Brooks’ competitors had set upon him to “humbug his business.” He instructed Brooks to bring him several objects and told him that a chicken had to be killed and its head and

81 “Conviction on Obeah Charge: John Dailey sent to prison for 5 months with hard labor,” The Daily Gleaner, May 15, 1915.
82 Ibid.
83 “Convicted on Obeah Charge: How a Man Tried to Take off Ghosts,” The Daily Gleaner, October 26, 1906.
blood would be buried at the entrance to the shop to keep away his enemies. Brooks paid Bruce thirty shillings and then Brooks proceeded to tell a constable, who hid outside the shop while he and Bruce completed the ritual. Bruce was arrested and sentenced to twelve months’ imprisonment and one year of police supervision.84

When obeah practitioners were not offering services to help an individual find a job or increase his or her business, they were often hired to perform other forms of service related to financial stress. One such case was the prosecution of William James in 1871, who was hired by John William Kean to recover ten pounds that was owed to him. James charged Kean five shillings and prescribed a ritual involving tying a string to a nail and carrying a card without dropping it.85 Later, in 1920, Nathaniel Hall was sentenced to twelve months imprisonment and eighteen lashes for practicing obeah after Irene Williams paid him six pounds to use supernatural rituals to locate and remove a pot of money that Hall claimed was buried in her yard.86 On another occasion, Charles Nugent approached a woman named Edith Connelly, who had had about four pounds stolen from her. Nugent performed divination using a pack of cards to help Connelly recover the money.87

If court records and newspapers accurately reflect the rituals that obeah practitioners performed from the mid-nineteenth to the mid-twentieth century, then it appears that spiritual practices were used as a method of “self-help” among the Jamaican

85 The Queen v. William James, 10 May 1871, Jamaica Archives, St. Anne Parish Court Records, A/5/1 (6).
87 “Convicted on Obeah Charge,” The Daily Gleaner, October 3, 1913.
population. On the one hand, practitioners offered services to assist people in obtaining money, employment, luck, and business, and on the other providing spiritual services was a way for elderly and infirm Jamaicans to obtain an income. In exchange for their own financial gain, these individuals performed rituals to assist others in their business or economic disputes. This spiritual commerce was so successful that police officers relied on false complaints of employment problems (rather than physical ailments) to trap these medico-religious practitioners into professing supernatural power.88

However, it is also important to reflect upon what we can learn about shifting colonial perceptions of obeah through examining these prosecution trends. The attribution of myalism to African indentured laborers, and the arrest of Indians and other immigrant workers for the practice of obeah suggest that colonial authorities may have been particularly vexed by individuals who migrated to the Caribbean in search of employment but resorted to spiritual work for a source of income. Additionally, when one juxtaposes the colonial characterization of obeah practitioners as able-bodied, young males who were too lazy to engage in gainful employment against the prosecution of numerous aged and infirm people for violating obeah laws, it seems that colonial authorities had a skewed view of ritual practitioners that focused on the importance of controlling Jamaican laborers.

Other aspects of Jamaican prosecutions of obeah from the mid-nineteenth to the mid-twentieth century also suggest that Caribbean officials were very concerned about the impact of ritual practices on employment disputes, and that they were likely more

preoccupied with these labor issues than the fraud that supposedly fueled the proscription of obeah. Despite the similarities between Caribbean obeah laws and England’s witchcraft and vagrancy statutes, the debates that permeated Britain’s courts from the 1880s to the 1920s about fraudulent intent never really surfaced in the Caribbean. Magistrates and judges rarely, if ever, questioned whether a person charged with obeah actually believed in the efficacy of the ritual that he or she performed; instead, the courts assumed fraud without hearing any evidence on the subject. The case of *Rex v. Chambers*, decided by the Supreme Court of Jamaica in 1901, provides particular insight on this issue.89 In this case, two people who were employed by the police department as decoys approached the defendant and told him that they were in trouble for stealing rum from an estate and asked for his help. The defendant gave them something in a box and told them that if they blew this substance onto the estate lands while calling out the owner’s name, they would not have any further legal trouble for stealing the rum. The defendant was convicted and sentenced to three hundred and sixty four days imprisonment at hard labor and twenty-four lashes. On appeal, one of the issues that the defendant’s lawyer raised was that the prosecution had not proven that the defendant had acted with fraudulent or illegal purpose. The appellate court ruled that it was irrelevant whether the defendant intended to commit fraud and it was also immaterial that clearly no one had been deceived by the defendant since his clients were police decoys. The court said that fraud was not a required element of every obeah case; a charge could be brought on the offense of pretending to use occult means for gain without demonstrating fraud.

In fact, most of the prosecutions for violations of obeah laws in Jamaica in the early to mid-twentieth century arose from situations where no one was deceived by the defendant’s claims that he or she had supernatural powers. Like the case of *Rex v. Chambers*, decoys were often used to solicit reputed obeah practitioners to perform a ritual so that the police could arrest him or her. More frequently, an obeah practitioner approached someone to offer to perform some ritual and that person reported the obeah practitioner to the police and helped set a trap. The police waited until the decoy or informant paid the obeah practitioner for his or her services and then arrested that individual for using “pretended” supernatural powers “for gain.”

In the early to mid-twentieth century, two appellate courts in the British Caribbean justified the use of police traps by claiming that they were protecting individuals who were actually duped by obeah practitioners. The first case was heard in British Guiana, where the obeah law was very similar to that of Jamaica; it listed several specific ways that an individual could contravene that law which included using any “pretended” practice of obeah or other supernatural power to intimidate or influence a person, inflict disease or damage to any person, discover lost or stolen goods, or “obtain any chattel, money or valuable security from any other person.” In 1922, the Supreme Court of British Guiana heard the appeal of Gussain Maraj who had been charged with violating the obeah law by “obtaining the sum of five dollars from Police Constable Carroll by the practice of obeah.” Maraj appealed his conviction, arguing that he had

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91 Ibid., 90.
not actually obtained money for the practice of obeah because the individuals who paid him were police officers who were merely setting a trap for him and therefore they knew that they would have their money returned once he was arrested. The court ruled that it was irrelevant what the “client” believed, the only pertinent mindset was that of the defendant who, evidence suggested, thought he was being paid for the practice of obeah. The justices also specifically remarked that police traps were “sometimes necessary” because the clients of obeah practitioners were “seldom likely to come forward themselves being doubtless prevented by shame or fear.”

For these reasons, Maraj’s conviction was upheld and his appeal was dismissed.

Then, in 1924, Charles Thompson appealed his conviction for practicing obeah in Jamaica. Thompson raised some complex evidentiary concerns about the testimony of the police officers, who he claimed had acted as agent provocateurs, coercing him to commit an offence when he otherwise would not have done so. The court upheld his conviction, stating that Thompson was “willing to trade on the superstitions of those in distress and his heartlessness is only equaled by his effrontery. It is saddening to this that he can so easily find dupes, and that too from amongst a class which can ill afford to part with hard earned savings.”

In his concurring opinion, Justice DeFreitas acknowledged that it was probably necessary to revisit the way that the police obtained evidence in obeah cases, but cited Resident Magistrate Leslie Thornton’s argument in 1904 that without police traps it would be nearly impossible to arrest an obeah practitioner because no matter how

92 Ibid., 91.
93 Ibid., 134.
well known an obeah practitioner was, it was very difficult to find anyone to testify against him or her.94

These cases reinforce the idea that in many, perhaps all, parts of the British Caribbean, police officers and courts relied on police traps to secure convictions in obeah prosecutions. In such cases, when the supposed clients were undercover police officers or an individual who had conspired with the authorities to entrap the obeah practitioner, no fraud was actually committed (except perhaps against the so-called obeah practitioner). Furthermore, as Maraj pointed out, no one had actually paid money for supernatural practices because the purported client could expect to have his or her fee returned upon the obeah practitioner’s arrest. Despite the prevalence of narratives about how obeah practitioners must be stopped from duping people out of their money, the court’s ruling in Maraj did not focus on the client but rather on the obeah practitioner’s intent to receive payment for his or her services. They justified this decision with the assertion that arresting an obeah practitioner through any means possible was in the interest of the community, because the real clients would be too afraid or embarrassed to bring charges against them. Yet the widespread participation of solicited clients in obeah prosecutions in Jamaica suggests that, at least in that colony, much of the population neither feared obeah practitioners nor were easily “duped” by them.

Furthermore, if legislators were concerned with obeah practitioners defrauding their clients and police traps were viewed as the cure to the fear and embarrassment that supposedly prevented most people from testifying against them, then the criminalization

94 Ibid., 134-135.
of consulting an obeah practitioner, which began in the mid-nineteenth century, was completely nonsensical. This is best exemplified by Jamaica’s 1898 Obeah Law which proscribed consulting any person practicing obeah “for any fraudulent or unlawful purpose,” and punished violators by up to six months imprisonment or whipping.95 If the person consulting the obeah practitioner agreed to compensate him or her, the potential term of imprisonment increased to up to twelve months, which was the same length of time that an individual could be sentenced for practicing obeah.96 By criminalizing consulting an obeah practitioner, legislators were penalizing individuals who they had repeatedly claimed were the victims. They also discouraged obeah cases from ever being litigated as a type of fraud because such prosecutions would require a complainant to come forward to testify that he or she had sought the services of an obeah practitioner. Since any individual making such a complaint could be arrested for consulting an obeah practitioner, police officers were forced to rely more on the “pretended” practice of obeah “for gain,” than for fraudulent purposes.

Therefore, while colonial authorities employed language about the “pretended” use of supernatural powers and prohibited the practice of obeah for fraudulent purposes, in many ways these references to fraud seem to have been a subterfuge to justify the proscription of rituals practices that disrupted plantation labor and provided workers with alternative forms of income. As the next section will discuss, in Africa, where laws related to ritual practices were not closely connected to labor disputes, proving fraud was more important than financial gain, and intent to deceive was typically not presumed.

95 Jamaica, “The Obeah Law, 1898,” 2.
96 Ibid.
“Pretended” Witchcraft and Theft by False Pretenses in Africa

Colonial laws in Africa prohibited many of the same practices as statutes in England and Jamaica, including the “pretended” practice of witchcraft, fortunetelling, and the use of purported supernatural powers to discover lost or stolen goods. However, there were also many differences in the way such practices were proscribed and how these provisions were enforced. In British African colonies, vagrancy legislation rarely banned fortunetelling, palmistry and the use of “occult science,” as it did in Britain and the Caribbean. Additionally, few witchcraft laws contained broad proscriptions of the “pretended” use of supernatural powers; rather, they only prohibited rituals intended to cause injury or property damage. Instead of proscribing fortunetelling and the “pretended” use of supernatural powers as a violation of vagrancy and witchcraft ordinances, most British colonies in Africa prohibited these practices as a type of fraud—theft by false pretenses.

By categorizing these rituals as fraud, colonial legislators placed “pretending” to possess supernatural powers in the class of crimes against a specific person, which therefore could only be proven if the defendant did not believe in the efficacy of her/his own practices and the client was actually defrauded. This was a sharp contrast to Britain and its Caribbean colonies where obeah and vagrancy laws were crimes against public order and morality which only required proof that the ritual had been performed. Thus, whereas courts in Britain declared that fraudulent intent was irrelevant and those in Jamaica automatically assumed deceit in every case, in colonial Africa, judges were forced to analyze in every proceeding whether the accused himself/herself believed in
his/her own purported powers. Frequently, appellate courts overturned convictions in these cases finding that, unless the defendant had above average education, she/he most likely believed in ritual practices such as divination, medico-religious healing, and ceremonies to increase luck and wealth.

Particularly in the case of healing rituals, in the early to mid-twentieth century appellate courts in Southern and Central Africa reversed numerous convictions for practices that closely resembled those that police and prosecutors targeted as violations of obeah laws in the Caribbean since the mid-nineteenth century. Furthermore, although the use of police traps became very common in England and the Caribbean in the twentieth century, they could only be used in limited ways in colonial Africa because fraud could not be proven if the client was an undercover officer and did not genuinely intend to pay the practitioner for his/her services. Therefore, colonial authorities in Africa had a much more difficult time prosecuting individuals for the “pretended” use of supernatural powers because, unless an individual intended to harm a person or property with his/her ritual practices, a conviction could only be secured if the defendant set out to commit fraud.

There are a variety of reasons that vagrancy legislation in Africa typically did not address fortunetelling, palmistry and the “pretended” practice of witchcraft. First and foremost, in the early to mid-nineteenth century, when Britain revised its vagrancy law and colonial legislators enacted similar ordinances in the Caribbean, most of Africa had not yet been colonized. In the Cape Colony, one of the few regions of Africa over which Britain had begun to gain control by the mid-nineteenth century, colonists attempted but
failed to pass vagrancy legislation in the 1830s. Their efforts to enact a vagrancy statute in the Cape Colony was a response to both the passage of Ordinance 50 in 1828, which gave free people of color the right to own land and choose their own employer, and the abolition of slavery in the British empire in 1834. If passed, the Vagrancy Law of 1834 would have allowed any official to arrest someone who appeared to have no “honest means of subsistence,” and if convicted, that individual could have been ordered to work on public roads until someone agreed to take him or her as a laborer. The Colonial Office blocked the passage of this law because it conflicted with Ordinance 50, which said that free people of color could not be arrested for vagrancy as a pretext to force them into compulsory labor.

If a vagrancy law had been enacted in the Cape Colony in the 1830s, this ordinance still would have been unlikely to address fortunetelling, palmistry and the “pretended” use of supernatural powers. These early efforts to implement labor laws in the Cape Colony were primarily directed at the Khoi who, along with the San and a relatively small enslaved population, were the majority of the people of color living within the colonial borders at this time. Therefore, the proposed vagrancy legislation was specifically designed to dismantle traditional Khoi means of subsistence, such as

100 The Xhosa were engaged in a frontier war with the colonists around the time of the proposed legislation, 1834-1835. Natal, the Orange Free State and the Transvaal were not colonized by Europeans until The Great Trek, when the Boer population set out in the mid-1830s and 1840s, largely in response to the passage of Ordinance 50, the abolition of slavery and the denial of vagrancy laws, to find lands beyond the British-controlled Cape Colony.
digging for roots and raising cattle. The vagrancy ordinance would likely not have addressed the “pretended” practice of witchcraft because, although the colonists occasionally asserted that the Khoi believed in witchcraft, they did not typically associate this group with witch-finding activities and other supernatural rituals to the extent that they described these practices among other groups in Southern Africa, such as the Xhosa and the Zulu.

Later in the nineteenth century, colonial authorities successfully enacted vagrancy legislation applying to each region of South Africa including the Cape Colony, Natal, the Transvaal and the Orange Free State. These laws emphasized the more traditional aspects of vagrancy in English law, primarily prohibiting wandering or loitering on private property without the permission of the owner, possessing no fixed place of residence or having no lawful means of subsistence. They did not contain provisions addressing public morality or prohibited types of employment, with the exception of Natal’s Vagrant Law of 1869 which banned any person from exposing himself in a public place or

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behaving in a “riotous or indecent manner.” Vagrancy laws in South Africa did not proscribe fortunetelling, palmistry or the use of “occult science.”

This was also usually true of legislation passed in British colonies in other regions of Africa, even though some of these laws more closely resembled England’s Vagrancy Act of 1824, classifying prostitutes, gamblers and beggars as idle persons or “vagabonds.” I have only found two exceptions to this. In Basutoland, Sir H. Barkley issued a proclamation in 1879 that said that “Any one practicing or attempting to practice witchcraft, and falsely accusing another of practicing it, is called a rogue, and punishable by fine, confiscation of property, and imprisonment.” The classification of anyone violating this law as a “rogue,” suggests that Barkley may have viewed witchcraft as a type of vagrancy, since these laws also used the language about “rogues” and “vagabonds.” Additionally, in 1889, the British colony of Mauritius, off the eastern coast of Africa, passed a vagrancy law that mirrored Britain’s Vagrancy Act of 1824; however, legislators also prohibited fortunetelling and divination as a type of theft by false pretenses. The paucity of vagrancy provisions prohibiting the “pretended” use of supernatural powers differentiates colonial Africa from Britain and the Caribbean; it

103 The law expressly uses the language “exposing his person,” although other sections appear to apply to both males and females, and use both “him” and “her.”


105 Jacob Dirk Barry and others, Report and Proceedings with Appendices of the Government Commission on Native Laws and Customs (Cape Town: W.A. Richards and Sons, 1883), Appendix A, page 12

suggests that colonial authorities did not classify these rituals as illegitimate forms of labor or offenses against public order.

This idea is further supported by the fact that it was also rare for witchcraft laws to generally prohibit the “pretended” use of supernatural powers. Within South Africa, the only exception to this was the Transvaal’s Witchcraft Ordinance of 1904 which stated:

Any person who for purposes of gain pretends to exercise or use any kind of supernatural power witchcraft sorcery enchantment or conjuration or undertakes to tell fortunes or pretends from his skill or knowledge in any occult science to discover where or in what manner anything supposed to have been stolen or lost may be found shall be liable upon conviction to imprisonment with hard labour for a period not exceeding one year.\[107\]

Cases prosecuted as violations of this provision appear to have closely resembled mid-nineteenth to twentieth century obeah prosecutions in three ways. First, many of these cases seem to have been based on the evidence of undercover police officers who approached the accused pretending to be a client.\[108\] Furthermore, since the Transvaal statute required a person to use his or her purported supernatural powers for “gain,” prosecutions often hinged on the definition of this term. The appellate court upheld these convictions, as the Supreme Courts of British Guiana and Jamaica had also done in 1920s, in cases where the accused consulted an undercover police officer.\[109\] Finally, and most significantly, the court expressly stated that the Transvaal Ordinance, “clearly renders unnecessary in a case of fortune telling, proof of fraud or intent to deceive or any

\[107\] South Africa, the Transvaal, “Ordinance No. 26 of 1904,” 151.


\[109\] For example see Rex v. Karem (1921) T.P.D. 278-281.
dishonest pretence of supernatural power.”110 With this ruling, the court clarified that in the Transvaal, as in Britain and its Caribbean colonies, the offence was the mere performance of a ritual, no one had to intend to deceive anyone else and no one actually needed to be defrauded.

It is not clear why the Transvaal’s law so closely resembled statutes in the Caribbean nor why it included these provisions generally prohibiting the “pretended” practice of witchcraft when other South African witchcraft ordinances did not; however, the reason may have been connected to employment disputes in this region. While African labor was heavily regulated throughout South Africa by the early twentieth century, the discovery of large deposits of gold in the Transvaal in 1886 set this area apart from most of the other colonies/provinces. Gold had increased in worldwide importance in 1873 when it replaced silver as the internal monetary standard, and by 1898, the Transvaal produced one-fourth of the world’s gold.111 However, many Africans were not interested in working in the gold mines because the conditions were horrible and wages were low.112 When the mines suffered from labor shortages in the early twentieth century, colonists resorted to measures that their Caribbean counterparts had employed more than fifty years earlier — the importation of foreign laborers. More than sixty thousand indentured Chinese workers were brought to supplement African labor in the Transvaal gold mines from 1904-1907.113


110 Rex v. Watson (1943), T.P.D. 41.
112 Moleah, South Africa, 285.
113 Ross, A Concise History of South Africa, 85.
When one considers that the labor shortages in the Transvaal gold mines occurred during precisely the same time period that the witchcraft ordinance was first introduced in this region, it seems likely that this law was designed to restrict the performance of spiritual practices as a type of unlawful employment. This would clearly explain why laws and prosecutions of “pretended” supernatural rituals in the Transvaal so closely resembled Caribbean obeah cases. However, it is unlikely that the explanation was so simple because the Orange Free State, the location of the Kimberley diamond mines, was the only province in South Africa where there was no witchcraft ordinance in effect until the consolidated South African Witchcraft Law entered into force in 1957. Therefore, the Transvaal’s witchcraft law remains an anomaly which may be partially but not fully explained by unique labor disputes in this region.

Despite the Transvaal’s provisions on the general use of “pretended” supernatural powers within its witchcraft laws, British authorities in most African colonies classified the practice of “pretended witchcraft,” or fortunetelling as a type of theft by false pretenses. The language used in these laws was typically nearly identical to that in Caribbean obeah statutes and British witchcraft or vagrancy ordinances; however, the categorization of “pretended witchcraft” as a form of theft by false pretenses drastically changed this offense. Unlike vagrancy and obeah, which were offenses against society, theft by false pretenses was a crime against a particular individual. While cases of vagrancy or obeah only required that the prosecution show that the defendant had used or professed to use supernatural powers, theft by false pretenses was not proven without a deeper inquiry into the beliefs of both the defendant and the client. For an individual to
be guilty of theft by false pretenses, she or he had to make a “representation,” that he or she knew was false, with the intent to deprive another person of money or property.¹¹⁴

As three judges explained in 1957 in their synthesis of South African criminal law, when a person claims that she or he has supernatural powers or can foretell the future, “[i]n deciding whether or not the accused was aware of the falsity of the representation, the court will have reference to our present state of knowledge and enlightenment and will be guided by common sense and experience.”¹¹⁵ In the first half of the nineteenth century, South African appellate courts developed several factors, such as the race and education of the accused, that were considered in determining whether the defendant believed that he or she had supernatural powers. However, the courts’ decisions were inconsistent, ruling that a defendant must have known his or her representations were false in some instances but not in others.

The earliest appeal of a conviction of theft by false pretenses for “pretending” to possess supernatural powers appears to have been Rex v. Masiminie, decided by the Transvaal Division of the Supreme Court of South Africa in 1904.¹¹⁶ In this case, an African man was sentenced to four months imprisonment at hard labor because he conducted a form of divination known as “throwing bones” to determine the cause of a man’s illness. On appeal, several of the defendant’s clients testified on his behalf, stating that he believed in his own powers of divination. The appellate court overturned his conviction, stating that there was no evidence of false pretenses. Among people with a

¹¹⁵ Ibid., 1686.
¹¹⁶ Rex v. Masiminie (1904), T.S. 560.
“higher degree of education than” a native South African, the justices said, the idea that the cause of disease could be determined by throwing bones would be “so palpably unfounded and absurd as to lead to the conclusion that the person making it must know it untrue, and so would act fraudulently in making it…” but this cannot be assumed of “an ignorant Kafir.” 117

In the 1930s, appellate courts began to limit the ruling in *Masiminie*, holding that the court should not assume that all native Africans believed in their own purported supernatural powers. 118 In the case of *Rex v. Mgoqi*, decided by the Eastern Districts Local Division of the South African Supreme Court in 1935, the defendant was convicted on four counts of theft by false pretenses and was sentenced to four months imprisonment on each charge. The accused was a self-described “Christian witchdoctor,” who claimed he was possessed by two spirits which he called up and consulted to provide advice to his clients. There were two sets of complainants in this case; the first reported that the defendant told them his spirit guides could help them find their lost horses and the second claimed that he prescribed treatments for some sick children that had supposedly been relayed to him by the spirits. Mgoqi appealed his convictions because he argued that the prosecution had not shown that he did not believe in his own professed ability to communicate with spirits. The appellate judges felt that fraud could be implied in this case, in part because they believed that the fact that the accused initially denied providing services to these clients suggested he was guilty of wrongdoing. Furthermore, although the judges did not explain what about the defendant’s background led them to this

117 Ibid.
conclusion, they said that this case “is one which shows the necessity of measures of this character to protect ignorant natives from being deluded by fellow-natives of more education and ability than they possess.”

Ten years later, the Appellate Division of the Supreme Court was more explicit about what factors they considered in finding that native Africans did not believe in their own purported supernatural powers. The defendants in the case of *Rex v. Alexander (Pty.) Ltd. and Others* sold a “medicine” to the complainant for twenty shillings that they claimed would bring him luck in gambling with dice or cards. They provided written instruction on how to use the “medicine,” which stated “[m]ake a cut on the forehead where the hair meets the forehead, apply this medicine. When you go to cards or dice or fafi [a number-betting game], apply this medicine on your hands, face and even under your feet.” In addition to the testimony of this specific client, the prosecutors also introduced evidence that the defendants owned a limited liability company and printed circulars advertising the sale of “green leaf” remedies and beauty products, “love-drop wonder” perfume, and other products. When the defendants argued that there was no proof that they knew their representations were false, the court distinguished this case from *Masiminie*, where they were dealing with “an ignorant Kafir.” The justices noted that the defendants in this case were directors of a limited liability company which had an office, a telephone, a postal address and a cable address. They engaged in sophisticated

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120 *Rex v. Alexander (Pty.) Ltd. And Others* (1946), A.D. 110-119.
121 Ibid., 115.
advertising methods and one of the defendants was a “competent penman.” For all these reasons, the court believed that these men were at a fairly advanced stage of civilization and enlightened to a degree “incompatible with belief in the truth of the representation.” The defendants tried to argue that the complainant was a man from a similar educational background but the court was not swayed and it dismissed the defendants’ appeal.

The debates about the “enlightenment” and “knowledge” of the defendant set these South African false pretenses cases apart from prosecutions of “pretending” to use supernatural powers in the Caribbean, where colonial officials assumed (but were not required to prove) that obeah practitioners had fraudulent intent. It is clear how significant this distinction was when we closely examine prosecutions in these regions. Particularly in the case of medico-religious practices, very similar rituals were documented in Jamaica and South Africa but were the basis for convictions for the “pretended” use of supernatural powers in the former and not the latter. The best example of this distinction is that in both Jamaica and South Africa, healers performed various methods of bloodletting, which often included the purported removal of foreign objects from the patient’s body. This process, referred to as “pulling” or “cupping” in Jamaica, typically began with the ritual specialist using divination to determine what part of the body had been infected by obeah or witchcraft. He or she would then cut the patient’s

122 Ibid., 118-119.
123 Ibid., 119.
infected skin with a razor and remove various objects such as glass bottles, nails, teeth and small animals like spiders and lizards.\textsuperscript{124}

In Jamaica, obeah prosecutions for this form of healing have been documented as early as the 1820s.\textsuperscript{125} In the mid to late 1850s, such cases became extremely common in Jamaica. They comprised at least twelve of the nineteen healing prosecutions between 1854 and 1871 that were documented in Jamaican Circuit Court record books. Individuals who performed similar rituals were also prosecuted for violating obeah laws in the British colony of Grenada in the nineteenth century.\textsuperscript{126} Colonial authorities as well as British residents and missionaries in the Caribbean justified the prosecution of these healers by labeling them as charlatans who duped their patients by claiming to have produce items from their body that had actually been concealed on the practitioner’s body before the consultation.\textsuperscript{127} However, many of these individuals were also associated with myalism, and thus were blamed for the labor disruptions attributed to that movement.

The practice of cupping or pulling has also been well documented in South Africa from at least the late nineteenth century through the mid-twentieth century.\textsuperscript{128} Despite extensive documentation of cupping or pulling in South Africa, I have not found any

\begin{itemize}
\item \textsuperscript{124} Brian Moore and Michele Johnson, \textit{Neither Led Nor Driven: Contesting British Imperialism in Jamaica, 1865-1920} (Kingston, Jamaica: University of West Indies Press, 2004), 60.
\item \textsuperscript{126} For example, see Case of Pierre, a Free Black Man, Grenada, March 1834, PRO, CO 101/78; The King against Polydore, Jamaica, 28 July 1831, PRO, CO 137/209.
\item \textsuperscript{127} For instance, see John Bull, “Obeahism,” \textit{New Readerships} 1 (1843), 711.
\end{itemize}
surviving records of prosecutions for these practices there. However, a case from Nyasaland (modern-day Malawi) in 1935, demonstrates a very different attitude between colonial authorities there and in the British Caribbean. A man named Mapsepsyte was charged with theft by false pretenses and with violating the witchcraft ordinance, which prohibited a person from claiming to be a wizard or have supernatural powers. He had allegedly performed two healing rituals, “which consisted of placing a glass on a person’s chest, cutting the chest and appearing to extract various articles from the mouth.” The court overturned his convictions, finding that there was no evidence of false pretense or “pretended witchcraft.” The court simply stated, “Faith healing with an accompaniment of sleight of hand does not seem to be among the evils aimed at in the Witchcraft Ordinance.”

Clearly, the categorization of the “pretended” practice of witchcraft as a type of false pretenses often required colonial magistrates and appellate judges in Africa to consider the defendant’s intent and determine whether his or her background and education justified the assumption that she or he could not have believed in supernatural powers. This was in direct contrast to England and Jamaica, where authorities often asserted that ritual practitioners committed fraud but, as vagrancy and obeah were offenses against society rather than crimes against an individual, intent to defraud did not have to be specifically proven. The result seems to have been that convictions for

“pretending” to possess supernatural powers were more frequently overturned in southern African than in Britain and the Caribbean.

The classification of “pretended” witchcraft in Africa as theft by false pretenses also differentiated these cases from prosecutions of obeah in the Caribbean because the former required the client to have actually been deceived but the latter did not. Therefore, many cases in Africa arose from dissatisfied clients bringing their claims to the authorities. However, particularly in the case of fortunetellers, who frequently came to the attention of the authorities when they advertised their services, some individuals were arrested with the use of a police trap. Nevertheless, because the crime of false pretenses requires an individual to have actually been duped, these defendants were typically charged with the lesser offense of attempted theft.\textsuperscript{131} Furthermore, even if the client went to the defendant with a legitimate intent to seek his or her services but lost faith in the defendant’s abilities before the completion of the ritual, the accused could only be charged with attempting to commit theft by false pretenses.\textsuperscript{132}

The reason why colonial legislators in Africa chose to categorize the “pretended” use of supernatural powers as a type of theft by false pretenses becomes quickly apparent when one considers the distinction between the prosecution of violations of the witchcraft ordinances and cases of fraud. By creating separate laws, colonial legislators crafted two types of crimes related to supernatural powers. The offenses listed in the witchcraft ordinance prohibited accusing others of practicing witchcraft and “pretending” to use witchcraft to cause injury or property damage. These were categorized as crimes against

\textsuperscript{131} For example, see Rex v. Zillah (1911), C.P.D. 646 and Rex v. Davis (1919), N.P.D. 218-220.

\textsuperscript{132} Rex v. Nothout (1912), C.P.D. 1037-1042.
public morality and order because they led to vigilante violence against individuals suspected of practicing witchcraft. Therefore, as with vagrancy and obeah in England and the Caribbean, the prosecution was only required to prove that the defendant performed the ritual in cases for violations of witchcraft laws. On the other hand, since the “pretended” use of witchcraft was classified as theft by false pretenses, which was a crime against another individual, the prosecution had a greater evidentiary burden because it had to show that the defendant had the intent to deceive the client and that the complainant had actually been defrauded. Furthermore, violations of the witchcraft ordinances were punishable with several years’ imprisonment but individuals convicted of theft by false pretenses could only be sentenced to a few months incarceration at hard labor. Clearly, colonial officials were more eager to suppress the crimes proscribed in witchcraft ordinances than those prohibited as theft by false pretenses, as the former category of cases was easier to prosecute and had greater potential penalties.

Some judges in colonial Africa discussed the emphasis on the suppression of witchcraft accusations and the use of “pretended” witchcraft to cause injury in their appellate decisions in cases regarding the professed use of supernatural powers. For instance, in Northern Rhodesia in 1924, an appellate court judge wrote a lengthy explanation of his ruling in *Rex v. Musunki and Namusaka*, discussing the purpose of the witchcraft ordinance in that colony. 133 He asserted that healers who named an ancestor or spirit as the source of an ailment were “harmless diviners,” and could not be prosecuted for violating the witchcraft ordinance. 134 This, of course, was different from Jamaica or

134 Ibid., 201.
Britain where such individuals could be charged with violating vagrancy, witchcraft or obeah laws. Furthermore, the judge explained that the witchcraft ordinance was designed to be a list of crimes that were “mala per se”- acts that were crimes without any proof of bad intent.\(^{135}\) This, the justice argued, was because witch-finders genuinely believed in their own supernatural abilities and classifying them as frauds was therefore not appropriate.

In 1943, the High Court of Southern Rhodesia also contemplated the purpose of its witchcraft ordinance and, in doing so, clarified the division between this law and theft by false pretenses.\(^{136}\) In the case of *Rex v. Maposa*, the court explained

> It is not every aspect of the practice of witchcraft which is punishable under Chapter 46 [the Witchcraft Ordinance]. It is only certain practices which endanger human life or affect property. Witchcraft is deeply ingrained in the native mind and cannot be eradicated in a moment. Only advancement and education can do that. Meanwhile the criminal law penalizes only those aspects of the practice in which the evil consequences on life or property are apparent.\(^{137}\)

Southern Rhodesia was unusual because instead of prohibiting the practice of “pretended” witchcraft in the section of the penal code dealing with larceny or fraud, colonial legislators included a provision in the witchcraft ordinance specifying that the use of supernatural powers should be punished as theft by false pretenses.\(^{138}\) In *Maposa*, the High Court explained the purpose of this provision, holding that “[u]nless one or other of the more serious features punishable under other sections of Chapter 46 is

\(^{135}\) Ibid., 200.

\(^{136}\) *Rex v. Maposa* (1943), S.R. 194.

\(^{137}\) Ibid.

\(^{138}\) The positioning of this clause within the Witchcraft Ordinance would not have changed its implementation; “pretending” to possess supernatural powers was still described as theft by false pretenses in Southern Rhodesia. Therefore, this law was comparable to those passed in most British African colonies.
involved it should be punished simply as fraud.”\(^{139}\) In particular, the court’s description of the other rituals proscribed in the witchcraft ordinance as “more serious features” reinforces the idea that colonial authorities felt that it was much more important to suppress these practices than fortunetelling, medico-religious healing or other purported uses of supernatural powers that were unrelated to witchcraft accusations.

Finally, one of the most illuminating discussions of the purpose of provisions prohibiting the “pretended” use of supernatural powers occurred in a Supreme Court case in the Zanzibar Protectorate in 1948. In Zanzibar, the only clause in the penal code related to supernatural practices was a provision prohibiting false pretenses that said, “Any person who for gain or reward pretends to exercise or use any kind of witchcraft, sorcery, enchantment, or conjuration, or undertakes to tell fortunes, or pretends from his skill or knowledge in any occult science to discover where or in what manner anything supposed to have been stolen or lost may be found, is guilty of a misdemeanor.”\(^{140}\)

Unlike the colonies in mainland East Africa, there was no separate witchcraft ordinance in Zanzibar and therefore there were no provisions in their laws related to witchcraft accusations or using “pretended” witchcraft to cause injury. Yet, the court still had to interpret whether even this provision categorizing “pretended” witchcraft and fortunetelling as forms of fraud was only violated if the accused performed a ritual that was intended to cause illness or injury.

In the case of *Hamadi Bin Juma v. The Crown*, the defendant was charged with “pretending to exercise witchcraft” because he said he could cure a patient’s eye disease

\(^{139}\) Ibid.

by driving the evil spirits out of her. The defendant’s counsel argued that the statute did not prohibit every pretended exercise of witchcraft; it prohibited only any pretense of supernatural power used for an “evil purpose,” i.e. to cause “harm, injury or loss to some person.” He pointed to witchcraft ordinances in Kenya, Tanganyika (Tanzania), and Uganda as examples of this argument. Ultimately, the court held that the witchcraft laws from East Africa, which prohibited the purported use of supernatural powers to cause injury, were not applicable in Zanzibar, where the penal code was “aimed at preventing the gullible from being defrauded by any of the various devices enumerated in the section.” Even though the appellate court did not ultimately agree with the defendant’s counsel, the fact that this question was raised on appeal, particularly in a colony that had no laws prohibiting the practice of witchcraft with intent to cause injury or witchcraft accusations, demonstrates how pervasive this limited view of witchcraft ordinances was by the mid-twentieth century.

Through these comparisons, it is apparent that despite the textual similarities of laws regarding fraud, vagrancy and the “pretended” practice of witchcraft or obeah in England, Africa and the Caribbean, the enforcement of these provisions varied greatly in different parts of the Atlantic world. In England, prosecutions for violations of the Witchcraft Act were rare but the Vagrancy Act became heavily litigated from the 1880s to the 1920s. Its application against spiritualist mediums and astrologers led to complex

\[141\] Ibid., 116-119.
\[142\] Ibid., 118.
\[143\] Ibid.
debates about whether any reasonable person could believe in fortunetelling and communications with the spirit world.

In the Caribbean, on the other hand, where obeah and vagrancy laws overlapped in their proscription of the “pretended” use of supernatural powers, colonial officials seem to have preferred to prosecute individuals for violating obeah laws. Colonial magistrates convicted hundreds of people for a variety of rituals, ranging from spiritual healing to divination to finding buried treasure, and assumed that those individuals who performed these services had intentionally duped their clients. None of the debates that permeated English courts about whether an individual could genuinely believe in the efficacy of the rituals he or she performed reached the Caribbean. Instead of discussing the role of intent to defraud in cases against ritual practitioners, colonial authorities prosecuted individuals who received compensation for their services and disrupted “legitimate” forms of labor.

In colonial Africa, appellate courts struggled to decide what legislators intended when they passed laws against “pretending” to practice witchcraft. When these provisions were enacted as a component of witchcraft statutes, as in the Transvaal, judges issued rulings that were comparable to those in the Caribbean. However, in instances where the “pretended” practice of witchcraft was proscribed as a type of fraud, appellate courts frequently overturned convictions, finding that ritual specialists typically believed in the efficacy of their practices.