

Barons Courts of Prestoungrange & Dolphinstoun

Trinity Session: Elizabeth II. 53. 2004. July – November

JUDGEMENT AND DECLARATOR

[E II. 53. 2004 P&D 02] Grant of an Absolute Pardon to those convicted of ‘conjunction or sorcery’ in and from the jurisdiction of the Barons Courts of Prestoungrange and Dolphinstoun constituting the capital offence of witchcraft before enactment of *The Witchcraft Act 1735*:

UPON THE PETITION of the Fiscal of the Baron Courts of Prestoungrange and Dolphinstoun as a class action on behalf of those persons [many but not all of whom were identified by Pugh, Roy J M, in *The Deil’s Ain*, 2001] convicted of ‘conjunction or sorcery’ [but excluding those convicted of treason in 1590 when the several instances of witchcraft were cited as ‘against the King’s person’] in and from the jurisdiction of the Barons Courts of Prestoungrange and Dolphinstoun constituting the capital offence of witchcraft before enactment of *The Witchcraft Act 1735*:

1. THAT legally defined as ‘conjunction or sorcery’ under Statute 1603, 1 Jac. I, c. 12, declares that “all persons invoking any evil spirit, or consulting, covenanting with, entertaining, employing, feeding, or rewarding any evil spirit; or taking up dead bodies from their graves to be used in any witchcraft, sorcery, charm, or incantment; or killing or otherwise hurting any person by such infernal arts, should be guilty of felony without benefit of clergy, and suffer death.”
2. THAT before the enactment of *The Witchcraft Act, 1735*, thousands of people throughout Scotland, mainly friendless elderly women and their cats, were executed for ‘conjunction or sorcery’ under the Statute 1603, 1 Jac. I, c. 12: A woman was burned at the stake in Scotland for this offence as late as 1722; a woman was burnt at the top of Castlehill in 1726 in Edinburgh; and the last execution of a woman for witchcraft occurred in Dornoch in 1727.
3. THAT all elderly women were at risk for accusation of this crime, particularly those who had become crotchty or bent with age, who were forced to use a walking-stick, or who were supposedly under evil influences because they mixed herbs to cure the ailing.
4. THAT witch-hunts throughout Scotland were sponsored by the public authorities of the day, and under Queen Mary’s law of 1563 witches were regarded as heretics.
 - 4.A. The worst years of witch-hunting were between 1629 and 1663, with peaks of hysteria in 1630, 1649, 1650, 1661 and 1663.
 - 4.B. The order for a witch-hunt by the Magistrate of the town or the local presbytery was a signal for much blood-letting, allowing the whole town or village to give vent to their superstitious fears.
 - 4.C. If someone knew something odd about an old woman, or had suspicions, they were encouraged to report the same. Under Mary’s law of 1563 to deny the existence of witchcraft or to assist anyone so accused made one equally guilty.
 - 4.D. The investigations which followed such accusations were conducted in an atmosphere of terror with total physical examinations by witch prickers. Confessions were extracted by hideous tortures as described by Pugh. Some would be dipped in the river or held under freezing water

until they confessed. If by some lucky chance, they survived, they were considered innocent. Many old women died from drowning whilst undergoing such tortures. The use of lashes, witch bridles, irons and pilniewinks was widespread to extract confessions.

- 4.E.** Most of the accused broke down, confessing to crimes of which they were innocent, to stop the cruel treatment which they were receiving. Convicted upon such 'confessions', they were burnt at the stake.
- 5.** THAT the Statute 1603, 1 Jac. I, c. 12, gave rise to the profession of Witchfinder, individuals who were appointed throughout Scotland to ferret out witches:
 - 5.A.** The public authorities gave witchfinders extraordinary investigative powers with which to ferret out witches: Witchfinders frequently pricked suspects with pins until they found the 'devil's mark'
 - 5.B.** The victims of witchfinders had no refuge. None dared to defend alleged witches as the witchfinders would accuse such defenders of also being witches.
 - 5.C.** Existence of this situation provided an easy way for one to get rid of one's enemies simply by accusing them of witchcraft. Persons so accused were convicted in public opinion on the very making of the charge. Hence, numerous people were frequently accused of witchcraft by enemies or persons coveting their property as an easy means of removing them. This situation was fraught with opportunity for gross public fraud by waging private vendettas under the guise of 'witchcraft'. As professional witchfinders were all too happy to have 'suspects' denounced to them, they took little care to examine the validity of such charges.
- 6.** THAT Reginald Scott wrote *The Discoveries of Witchcraft* in 1584 with the goal of preventing the further persecution of people popularly believed to be witches. The declared purpose of his studies was 'to expose the impostors on the one hand, and the credulity on the other that supported the belief in witchcraft'.
- 7.** THAT before the enactment of *The Witchcraft Act, 1735*, some two hundred persons are believed to have been convicted of 'conjuraton or sorcery' within the jurisdiction of the Baron Courts of Prestoungrange and Dolphinstoun and executed for the crime of witchcraft pursuant to the Statute 1603, 1 Jac. I, c. 12:
 - 7.A.** Most of those persons condemned for witchcraft within the jurisdiction of the Baron Courts of Prestoungrange and Dolphinstoun were convicted on the basis of 'spectral evidence' – that is to say prosecuting witnesses declared that they 'felt' the presence of evil 'sprints' or 'heard' spirit 'voices'.
 - 7.B.** Such 'spectral evidence' is impossible to prove or to disprove; nor is it possible for the accused to cross-examine the 'spirit' concerned. One is convicted upon the very making of such charges without any possibility of offering a defence.
 - 7.C.** Scots law permits three verdicts: "Guilty", "Non Guilty", and "Not Proven". The latter implies *insufficient evidence*.
 - 7.D.** At the least, some of the two hundred or more persons convicted of 'conjuraton or sorcery' within the jurisdiction of the Barons Courts of Prestoungrange and Dolphinstoun and executed for the same were convicted on the basis of *insufficient evidence* due to the obvious inability of the accused to confront the 'spirit' and to disprove such 'spectral evidence' upon which they were condemned.
- 8.** THAT Blackstone's *Commentaries on the Laws of England*, Book IV, p. 60, says the following of witchcraft:

- 8.A.** “A sixth species of offence against God and religion, of which our ancient books are full, is a crime of which one knows not well what account to give. I mean the offence of witchcraft, conjuration, inchantment, or sorcery.
- 8.B.** “The president Montesquieu ranks them also both together, but with a very different view; laying it down as an important maxim, that we ought to be very circumspect in the prosecution of magic and heresy; because the most unexceptional conduct, the purest morals, and the constant practice of every duty in life, are not a sufficient security against the suspicion of crimes like these.”
- 8.C.** “Wherefore it seems to be the most eligible way to conduct, with an ingenious writer of our own, that in general there has been such a thing as witchcraft; thought one cannot give credit to any particular modern instance of it.”
- 8.D.** “Our forefathers were strong believers, when they enacted by statute 22 Hen. VIII, c. 8, all witchcraft and sorcery to be felony without benefit of clergy; and again by statute 1 Jac. I, c. 12.
- 8.E.** “These acts continued in force till lately, to the terror of all ancient females in the kingdom: and many poor wretches were sacrificed thereby to the prejudice of their neighbours, and their own illusions; not a few having, by some means or other, confessed the fact at the gallows.”
- 8.F.** “But all executions for this dubious crime are now at an end; our legislature having at length followed the wise example of Louis XIV, in France, who thought proper by an edict to restrain the tribunals of justice from receiving information’s of witchcraft.”
- 8.G.** “And accordingly it is with us enacted by statute 9 Geo. II, c. 5, that no prosecution shall for the future be carried on against any persons for conjuration, witchcraft, sorcery, or enchantments.”
- 9.** THAT as it appears that nearly one hundred persons who were convicted of ‘conjuration or sorcery’ within the jurisdiction of these our Baron Courts of Prestoungrange and Dolphinstoun and executed for the same were convicted on the basis of legally *“insufficient evidence”* and many were probably the victims of personal vendettas by enemies who alleged the commission of ‘Witchcraft’ solely as a means to getting rid of the accused; the Fiscal of the Baron Courts of Prestoungrange and Dolphinstoun now petitions and moves these Baron Courts to vacate retrospectively the conviction of all persons accused of ‘conjuration or sorcery’ [excepting those found guilty of treason] within the jurisdiction of the Baron Courts of Prestoungrange and Dolphinstoun on the grounds of evidence insufficient in law upon which to base a conviction and to grant in the Name of the Barons Courts an Absolute Pardon to those persons so convicted of ‘conjuration or sorcery’ within their jurisdiction.

FINDINGS OF THE BARONS COURTS

On 27th July 2004 in the Trinity Session of our Baron Courts of Prestoungrange and Dolphinstoun we *pronounce* the following interlocutor:

Finds in Fact:

- 1) That it appears that a gross miscarriage of justice was inflicted upon many persons convicted of ‘conjuration or sorcery’ within the jurisdiction of the Baron Courts of Prestoungrange and Dolphinstoun and executed for the same before the enactment of *The Witchcraft Act 1735*.

- 2) THAT before the enactment of *The Witchcraft Act, 1735*, thousands of people through out Scotland and their cats, were executed for ‘conjuration or sorcery’ under the Statute 1603, 1 Jac. I, c. 12, upon legally insufficient ‘spectral evidence’ under Scots Law: That is to say, the ‘voices’ or actions of ‘spirits’ given as ‘evidence’ of the ‘guilt’ of the accused.
- 3) THAT those persons condemned for witchcraft within the jurisdiction of the Baron Courts of Prestoungrange and Dolphinstoun were convicted on the basis of ‘spectral evidence’, that is to say, the ‘voices’ or actions of ‘spirits’ given as ‘evidence’ of the ‘guilt’ of the accused.
- 4) THAT this gave rise to a situation of waging private vendettas by accusing one’s enemies of witchcraft.
- 5) THAT all those persons and their cats were convicted of ‘conjuration or sorcery’ within the jurisdiction of the Baron Courts of Prestoungrange and Dolphinstoun and executed for the same were convicted on the basis of legally insufficient “spectral evidence” and were probably the victims of personal vendettas by personal enemies who alleged the commission of ‘Witchcraft’ solely as a means to getting rid of the accused.

Finds in Law:

- 1) THAT ‘spectral evidence’, consisting of the ‘voices’ or ‘actions’ of evil spirits, is impossible to prove or to disprove in a court of law; nor is it possible for the accused to cross-examine the ‘spirit’ concerned: One is convicted upon the very making of such charges without any possibility of offering a defence against such ‘spectral evidence’.
- 2) That, at the least, the verdict of “Not Proven” should have been rendered in all cases and situation where those accused of witchcraft were convicted on the basis of legally insufficient ‘spectral evidence’.
- 3) That all those persons and their cats convicted of ‘conjuration or sorcery’ within the jurisdiction of the Baron Courts of Prestoungrange and Dolphinstoun and executed for the same were wrongly convicted upon the basis of “spectral evidence” legally insufficient under Scots law to sustain a conviction.

HELD:

1) **The Baron Courts of Prestoungrange and Dolphinstoun rule that weightily and sufficient grounds of both fact and law exist for vacating the conviction of all those persons and their cats who were convicted of ‘conjuration or sorcery’ within the jurisdiction of the Baron Courts of Prestoungrange and Dolphinstoun and executed for the same before the enactment of *The Witchcraft Act 1735*: In all cases such convictions were based upon ‘spectral evidence’ legally insufficient under Scots law to sustain a conviction. In all such cases the verdict of “Not Proven” ought to have been rendered by the Baron Courts of the day.**

2) **Accordingly, the Baron Courts of Prestoungrange and Dolphinstoun grant an Absolute Pardon to those persons convicted of ‘conjuration or sorcery’ within their jurisdiction before the enactment of *The Witchcraft Act 1735* as well as to the cats concerned.**

3) **Furthermore, the Baron Courts order that this most unfortunate carriage of justice inflicted upon such persons and their cats be remembered: (i) in murals to be painted in the baronies depicting their plight; (ii) by an historical record being published that both recounts their alleged crimes and punishments and records such Absolute Pardon; and that (iii) the tragic events involved be re-enacted each year on Hallow-e’en and from time to time as a living reminder of this earlier process of justice in Scotland.**