Bignall the 2d Witness differs from Applin & speaks more positively than he does himself—

The Paper Ld. appears to be Instructions for a Will & is as follows.

A. Francis Griffin of Grimsbury Northton Yeo-
as to my Freehold Lds at Farmboro' Warr: } To Wm Griffin
and } his Sone
my Leasehold Estate at Cleydon Oxon . . . . } & Richd
Griffin ~~nephew~~ of Watergall ought War. my Nephew
his Hrs Exrs &a

The Devise to his Father in trust till 21 & to apply—
Proffts for Breeders up Wm
Provided that if Wm Thos from ill behaviour be—
undeserving of this Devise Then he gives same to such—
of his Sons & his Hrs as he Father shall appoint.
As to y personals to Rd subject to Legacs
Wm Griffith Son of my nephew Thos Griffin of Hodnell
Warr Yeom 20 with Int a 4 within 12 mos
Judith Griffin Daur of Sal Griffin of Horley Oxs Miller
£40 with Int a 4 within 12 mos
Rd Exr

(Dr Calvert) for Richard Griffin.

Mr Applin appears to have taken the Instructions from the Dead mouth, carried them home & was to return them by 5 or 6 o'clock. The Clark brought them at 7 the next morning, when he was told G. was dead—
The Deed was blooded soon after the Attorney left him & said he believed he shd sleep if he went to Bed— 2 Persons sat up with him, who saw no alteration till within 1/2 an hour of his death We have pleaded Declarations of affection to the said Rd Griffin, so that it rests on the Testimony of the 7 Witnesses exam: on the Allon given in 23 Jan: 1765.

Dr Wynne for James Griffin

Applin says it is his general Practice to read over the Instructions, but can't positively say whether he did or not, he believes the Letters Rd Exr were inserted by him for his recollection, & that they mean Richard Griffin, because if any other person had been meant he shd have wrote the name at length— Bignall speaks positively, he verily believes the Deed intended Rd Griffith the Exor, because, when the Deed was asked, whom he wd have Exor, he said Richard, & no other Person had been named, & he had shewn regard for Richard who propounds this Paper
Applin, these were the Instructions given him by the Dead, because they are of his own hand writing, & his Clerk Bignall was present—
To 5 Interrog: The Instructions being shewn, that he made the alterations at the time he received them.
To 6th — That he received a message, but can't say whether verbal or Written or by whom.
To 9th — Verily believes he read them over, in the form, manner & words they now appear, except those in the margin
Bignal to 5 Interrog: . . says the Instructions were read over, but can't say wh: as they now appear because he did not look over Applin.

(Dr Calvert)

Instructions
Executory prevented by Death.—
Cannot operate

The Paper propounded contains only Instructions given to an Attorney: Unexecuted Papers must be clearly proved; the Presumption being agt them; the Onus probandi lies on the Propounder: If the Dead fixed a time for executing & nothing appears, but that the Hand of God prevented the Execution, the Intention of the Dec: will be supposed to have continued till his Death
Woodman & Woodman 1755. Instructions were taken by an Attorney who was sent to several times talked to about his Will, the Sanity of the Testator being proved. Sir Geo Lee pronounced for them & quoted so well known, the Cases of
Wilkenson & Wolsley. Prerog:
Sellers & Garnett. Delegates. . . .
If Instructions therefore can be established, provided they are proved. The next Question is wh: we have made such necessary proof. I hope you will think we have, & that the motion came from the Dec: himself:
Applin speaks very cautiously, by reason of the Distance of Time being near 2 years, & the Variety of Affairs wch have since intervened.

The Sanity is proved by Bignall, & all the Witnesses confirm the account that the Deed was the Mover of the Transaction. The Identity is proved by Applin who says the Paper was wrote by himself, & Bignell his Clerk who is well acquainted with Applins Handwriting, & that W—C was by him altered to Watergall. If this is asked why the Paper was not executed, the Answer is obvious, the Deed intended it, but was prevented by Death. As to the Paper, it is made in favor of one whom the Dead educated from 7 years of age, settled him in 2 Farms, released one to him, behaved with uninterrupted affection towards him till his death. Upon the whole we hope you will pronounce in favor of the Will & decree Probate to Rd Griffin.

(Dr Wynne) It appears extraordinary that A. G. has delayd so long to apply for the Probat, & allow the next of kin to obtain Admon. In this Will, almost all the Relations are past over.
Imperfect Papers have unquestionably been pronounced for, but then there was no doubt about them, so far as they went, & Parol Evidence was only called in Aid of that wch on the face of it, did not support them.

Parol Evidence when received

Where a Paper is unintelligible on account of a Chasm or nonsence you will not allow Evidence to explain what can have no meaning. Supposing Parole Evidence is to be received, we will examine the Deposition— Applin speaks not as of the fact was impress on his memory but from the reference; Bignal speaks in the same manner, how what Opinion can the Ct have of a man's Accuracy, who is so incautious as when he is taking Instructions, to omit asking for the Surname of him to whom so considerable a share is given—
The Personals to Rd. They have not even pleaded that Rd: Gr: was the Person to whom the Personals are given. There is no device to Rd only descriptive of Wm's Father. You must prove that the Dead had an Intent of making a Will that the Instructions were the same: no other Proof than these being those wrote down were read— It is usual for Witnesses to give some account of the Words, of the Expressions of Affection, that the Ct might compare the Evidence with the Paper itself. Applin believes they were such Instructions as the Dead wd have read over— What Intention did he shew to execute them, & Step did he take, the Dead dont appear to have spoke a word relative thereto, If he was doing an Act he was anxious about, it is natural he shd have said something to the Apothecary & Father of the Legatee—
(Dr Calvert) I agree with the Dr that parole Evidence can be received only in dubious Cases. It must be clear to you that the Letters standing in the Memorandum, must stand for an Exor on account of the necessity, tho it wd not denote an Exor if it stood single in another Paper. The Question is, who that Exor is. It is objected Mr Applin is not positive enough. This not likely a man of Business, wd write a name at length twice; Rd Griffin being once named, Rd must refer to him only. The Attorney speaks to his belief & corroborates that Belief, by assigning the reason of it—
Dr Hay. Judge—
The Question arises on the validity of the Will, why Mr Rd Griffin, did not apply before, or how prevented, is not my Business to enquire) He might think it wd not be established— I am to determine from the Paper & the Evidence, This disadvantageous to the Proponent, that the Witnesses are not so accurate as in recenti acta; I must take upon y fact, that a Message went from the Dead to Mr Applin, to make his Will. There is no doubt of the Deads Capacity: after dinner Applin & Bignell are left alone with him. A. swears the Dead said he wanted to make his Will & to dispose of what he had. His first proposition was to bring the Will at 5 in the Afternoon if any Alteration happened, otherwise the next morn: there is a little variation wh: y Dead: or A. desired the paper to be sent— Gardiner sat up with him, there was no immediate change till 1/2 an hour before he died— The 2. is, does the Paper stand in a light to be established? The Law of England admits unexecuted Papers, the presumption is