a year more, wch Owen not believing, it was sent to the Deed who confirm'd the Gardiners Assertion; consider the Account of those who ~~associated~~ with the Deed, (our Opponents have cram'd none) We, five; I will take the liberty to name them & what they say, Mr Dove who frequently visited the Testator till within 10 or 12 Years of his death, says he stood God father to one of his Children, behaved rationally, & gave Orders to his Servants; Dr Harrison deposes to his being sensible till within 10 Years of his death, & Sir Thos Trollop till about 10 Years since — Mr Maidwell being indebted to Deed on Mortgage, the first time he paid him the Interest in 1741, figured the different Coins on Paper wch Mr B. cast up — Eliz: Howgrave who was acquainted with Deed till 1749 gives many Instances of his Understanding, as being angry with the Clergyman for not reading Prayers in ye Afternoon his going into another Room to pray &c — They all speak to his bad Appearance, & to their judging him incapable on their first acquaintance than they found him — Mr Howgrave gives an Instance of his Humanity, Discretion & Capacity; upon his representing Mr Redmond Bs distressed Condition, the Deed (if Howgrave is to be believd) sends him Money to buy him Cloaths & pay his Debt, but takes care he shd game away his fortune — 1739 he is High Sheriff; it is impossible to conceive his Relations wd not have represented it, got him excused, if incapable to serve. Henry Close & Parry indeed swear he was improper, that he did not know what to do, by reason of his Epileptic fits, that being ill one Day during ye Assizes & unable to attend, the Judge said why do you appoint such an one Sheriff; no Inference of Incapacity can be inferr'd from this Speech — The cloud of Evidence brought by the Opponents looks as if they wanted to overbear us by Numbers — Dr Stukely, Dr Clarke do not remember from 1743 to 1745 one silly thing said or done by the Deed; Dr S. was old, wh: his own Memory decayd or not, I cant say, what Dr C. says, shews he was shy — In his Account Book the fees are set down wch he gave in Town to Sir Edw: Hulse, Dr Mead, wch shews he knew, what was going forward — As to Close, I must except him from the general Obj: he deposes so very strongly; he deposes to Deed riding amongst ye Corn & names Thompson as present, who flatly contradicts him — Mary Hunt speaks to a fact, wch this Man must know, i.e. Langtons Marriage; if she speaks truth, this Man must be perjured, for he swears, the Deed cd not answer a Question or do any rational Act, all the while he knew him — The Ct will pay attention to a particular part of his depon, distinguishing him from the other Witnesses; In an Interog: he denies giving a Receipt to Deed, in the next, he goes thro, & denies his own hand writing, & the reason given is, he cd not write so well, & if any Body had wrote it his mark wd have appeard — Thus stands ye Evidence; We depose to his Capacity, previous & long subsequent to ye Date of the 3 Papers; we have laid a foundation of general Capacity to introduce the Execution of the Papers themselves, there is room to let in proof relative thereto; I will mention the internal Evidence of the Papers themselves; nothing so proper as to dispose of his Estate, as he has; Miss Wright so proper as to dispose of his Estate, as he has; Miss Wright's Father refused to pay a Debt of 800£ pleaded in Bar the Statute of Limitations, at wch the Deed was angry; Mr Foster took the Instructions, the Deed made his Fathers Will his model, he said he wd leave his Mothers Relations nothing, Miss Wright was so; This a Subsidiary proof of his Capacity; it wd not have been a probable Story, if he had given particular Directions for each Legacy — It is not the Behavior of a quick Man: he produced



the Will & Mr F. took a good deal of time to explain to him the Law Terms &c — It will be said indeed that the Instructions are not in his own hand writing; it is not to be insisted that it shd be the entire motion of his own mind, but if another writes & brings them it is sufficient, as in Coombes Case

Prerog: June 17. 1754

Wise & Johnson — Before Sir Geo Lee, Johnson made his Will 2 May 1753. left ye Int: of 1400£ to his Father & Mother for their Lives, then to his Sisters Children, in default thereof to his next of kin, appd Wise his Uncle & Harrison & Brown (who owed him 800£) Sports & ad them Legacies of 25£ each, by a Codicil he added his Father Wm Johnson to ye other Exors &c. &c.

It is objected the Instructions for the 3d Codicil did not originally proceed from the Deed; but there is a Constat of his Intention at the time of the Execution, the Obj: is nugatory if the Deed was acquainted with the Substance — As to Skeath, the obtaining the Declaration is a presumption agt them, & if he had or that been . . . . . it wd have rejected it. to Hudsons Case, & the Ct wd have taken it so & rejected the Plea with Resentment; What Persons who had obtaind a Will improperly wd have got ye Deed to make a Codicil of the same Date, only to give 4 Rings? this shews it to be of his own motion — Jn Skeath Jun: believes his father witnessd the Codicil, because he was of a good Character & wd not sign any thing improperly, he does not say he did not sign, or that he turns aft: as an Act of Insanity; he speaks dubiously & unaccountably from his Deposing to the Will & to ye Cod: of 1746 as if he had quarrelled with Owen; he deposes vaguely to the Cod: of 1743 — he can't speak to the Testators Sanity at 1746 — it is a misfortune to have such a Witness as Gann, but it cannot prove agt the Sanity of ye Deed at the time; it cannot prove for the Will, but we rely on the . . . . . As Foster says he did not receive the Instructions from the Deed himself, the Ct shd be satisfied; he took a great deal of Pains to explain the Terms to the Testator, wh: he understood them exactly, is not material; what I beg leave to insist on, is, that we have made out by Witnesses, the Deed had a Capacity & the Person concerned was an impartial Person & took a great deal of Pains —

Dr Burrell . . . The Objections taken to the Validity of this Will & Codicils, are, a general Incapacity in the Deed, his Insanity at the Times they were made, & Defect of proof with respect to the Instructions, that Deed was in the Custody & Controul of Edw: Owen & therefore liable to have a will &c imposed on him; that he never concerned himself in the management & admon of his Affairs; an Exceptive Allon was likewise given to the Characters of Jn Skeath jun: & Jn Gann, 2 of the Witnesses to the 2d Codicil; these are the Points we are to controvert these are the Difficulties we are to remove; but before I enter upon the discussion of them, I will beg leave to state to the Ct the Variations between the Codicils & the Will, wch are in themselves so trifling & uninteresting to the Parties principally concerned in the Testators Bounty, that it is very improbable they should flow from any other Source than the Inclination of ye Deed himself — The Will is made entirely in favor of Relations, except a few Legacies to Servants, 500£ to each of the Exors, 5£ to the Poor of these Parishes in wch Deeds Estates lay, Rings to ye Acquaintance & Scarfs & Gloves to the Tenants & their Wives — The first Cod: bearing even date with the Will, is calculated merely to supply certain omissions in the Will, of Rings to a few friends — the 2d Cod: gives 500£ to Edw: Owen wch Sum was by the Will given to Thos Hyde & lapsed by his death — The 3d Cod: revokes the Devise of Lands &c in Lincolnsh: & Rutlandsh: (wch were by the Will given to the Deeds Uncle Redman B & his Issue, in default thereof to his Uncle Wm B & his Issue, in default thereof) to Wm Foster his Heirs & Assigns forever, & to Miss Hydes) adds Brownlow Toller & Wm Barker Jun: to his two

* declared & intended formerly, it appeared that a single Legacy of 25£ only in Grief for his Father, the Ct opposed this Cod: as fraudulently obtained & if it appeared that if he had not intended to dam, he had cancel'd him a Dev: of a Cod: each of the Exors paid 25£ as it is expressly to Relinquishment, 22 Mar: 1746 when Dee gave him Letter (of 25£) to Exors to pay him a Legacy, & when he gave him a Dev: of the Estate, Cod: Mr Harrison a Dev: of his Estate, Cod: Mr Brown a Dev: of his Estate, Cod: Mr Wise a Dev: of his Estate, Cod: Mr Johnson a Dev: of his Estate, Cod: Mr Barker a Dev: of his Estate, Cod: Mr Toller a Dev: of his Estate, Cod: Mr Hyde a Dev: of his Estate, Cod: Mr Owen a Dev: of his Estate, Cod: Mr Foster a Dev: of his Estate, Cod: Mr Redman a Dev: of his Estate, Cod: Mr Johnson a Dev: of his Estate, Cod: Mr Harrison a Dev: of his Estate, Cod: Mr Brown a Dev: of his Estate, Cod: Mr Wise