former Trustees, leaves out his Uncle Wm B. name, he had died 27 April 1742, & on failure of Redmans Issue bequeaths ½ his Estate to Wm Foster & his Heirs, & if he died in the Testators Life time, to his eldest Son Thos: & if he died in the Testators Life time, to the Heirs of his Body, & in default thereof, to Wm younger Brother of sd Thos: his Heirs & Assigns forever; the other ½ is given to the 2 daughters of the Rev.d Thos. Hyde whose names are specified to be Philippa & Anne — The Instructions for the Will & first Codicil are fully proved by Mr Sam.l Foster, who says he went about 25th Aug.t 1741 to Deeds House at Bethall, in pursuance of a Message he had before received from him; when he got there Deed told him he had sent for him to make his Will, desired he wd prepare one accordingly, but it being near dinner time, Deed's Music Master with him, no more was said then; but about an Hour after Dinner, Deed resumed the Conversation, & as there were sev.l persons present, I desired some private Conversation with the Deed, who then withdrew with Dep.t into another Room; that when they were alone, Deed pulled out of his pocket, & gave Dep.t Instructions for his Will, not wrote in his own hand; Dep.t read them & on talking with Deed, made some little additions & alterations thereto, with his Approbation; who said he proposd making his Will, as near as he cd, to his fathers Will, by chiefly giving what he had, to his Fathers Relations, & not to his Mother, for the latter had not used him, or his father well. Dep.t desired to see his Fathers Will, the Probate of wch was shewn to him, believd little or nothing was therein given to Deeds mothers Relations; he goes on & says, he spent some time in altering, explaining & considering with Deed, sd Instructions, wch he appeard then to understand; that he thereupon, from sd Instructions, made a draft of sd Will, wch when finisd, he read all over to Deed, who approved thereof, & desired him to make 2 Copies, that there might be a Duplicate of the Original Will; that he did not finish them till the next Evening, being 26 Aug.t y.e day of the Date of the Will, & when wrote, compard carefully sd Will or Duplicate, with sd Draft & found it to agree therewith & then compard the Will, or Duplicate, with the other Draft & found that also to agree, & then read over sd Will or Duplicate to Deed, who approvd thereof & executed the same in the Presence of him, Foster, & Rubins & In Skeath — who confirm his Evidence, with respect to y.e Execution of the said Will —

Mr Foster depones to his receiving Verbal Instructions, from Deed, for Cod: B. wch he drew immediately, read over to Deed, who approved & executed the same, that Evening & he attested it —

As to Cod: C. there do not appear any Instructions, but Mr Foster swears, he believes the Body thereof & Subscription to be the Hand writing of the Deed; & Tho.s Hunt confirms him, with respect to the Subscription — Foster & Hunt both say, they are well acquainted with the Deeds handwriting — It is attested by 3 Witnesses, In Skeath who is dead, In Skeath Jun: & In Gann, whose Testimonys are excepted agt: before I therefore proceed to the 3d Cod: I will state, if possible obviate, the Objections taken agt them — & first with regard to Skeath, whose Character is attacked, on account of a Declaration said to be signd by him 10 Sep: 1764, (wherein he says he thinks the Deed never had Capacity) in the Presence of Wyche & Randall who attested the same — It is necessary for me to enquire, a little, into this Transaction, & I must observe to the Ct, that the name of Wyche is sufficient to found a Suspicion of unfair Practices; he is himself a Witness exam.d on the part of Mr Wright & his Son is her Solliciter in the Cause; & what farther confirms me in that Idea is, that Skeath came voluntarily, to be exam.d within a month after the Date of this Declaration, & to the 6th Interrog: answers, "that Deed was a man of strong natural parts & quick Apprehension, till 4 or 5 Yrs before his death" & to 13th Interrog: "he has not always thought Deed wanted natural Sense, nor ever declard as much or to the like effect" —



under these Circumstances, perhaps I shd be justified in forming any supposition, but I will, out of Candour to Wyche & Randall, suppose they took advantage of Skeath over a Bottle, when he was heated with Liquor, & persuaded him to sign a Paper, to the Contents of wch he was an utter Stranger, as his subsequent Behaviour sufficiently testifys; I say, I have supposed this out of Candour, lest I shd be obliged to have recourse to a harsher Conjecture, that of accusing the Witnesses to the ad declaration, of Fabricating the Paper themselves; I shd humbly hope my Sentiments wd meet with the Approbation of the Ct; but I will go a step further, insist, that if Skeath had confirmd the Declaration, alledged to be signd by him, it wd not have availed, to affect his attestation; for I apprehend it to be clear Law, that Witnesses contradicting their own Act & Deed, are in that respect not to be credited, tho, they are in all other Points, where they stand uncontradicted; It was so laid down in Brown & Ellis by Sir Geo. Lee, who cited the Case of Collins & Chapman at the Delegates, where a Witness had discovered that he was induced to forge a Will, his Evidence was received, where supported by other Circumstances; the same was ruled Law in Hudsons Case, where 2 Witn.s swore y.e Testator did not publish it as his last Will, but that another guided his hand, that y.e Testator, had made his mark, but said nothing, nor was capable; & com: it was proved the Testator had made 2 former Wills & in them had devided his Land in y.e like manner, & that he died of a Consumption, & was sensible to the last; hereupon it appeard the Witnesses had been dealt with, to wch the Council on the other Side urged, that if the Witnesses were not to be believed, there wd not be 3 Witn.s to the Will, & so no good Will within the Statute, to wch Ld C.J. Pembertons said, if there were 3 Witn.s to a Will, & one, was a Thief or Person not credible, yet the Words of the Statute being satisfied, he had collateral proof to fortify the Will, he wd direct a Jury to find it a good Will & he committed the Witnesses, took Security of the Plf to prosecute them for Perjury — The Reason of this Law & Equity adopting these Sentiments, are evident & plain, for if Witnesses were suffered to contradict their own Act & Deed; it wd at any time, be in the power, of a corrupt & perjurd Witness, to destroy the Will of the Ablest Lawyer, or defeat the Act of the wisest man in England —

Skinner 79 } 2 Burn. 253 }

The Objection to Gann is, his swearing to his fathers handwriting as a Witness to Cod: C. in Feb. 1744/5 yet says, his father died in April 1743 — This strange contradiction, will, I readily admit, destroy the validity of his Evidence; but it is so palpable, as must certainly proceed rather from Error, than any Intention to mislead the Ct; as will more clearly appear, when y.e observe the extreme ignorance & illiteratenes of the Witness & the manner of his deposing; as follows, "he believes it to be his Fathers hand writing, but it is not wrote so bold as his father usually wrote," the Truth of the Affair is, he was told he was to be exam.d to his Fathers hand writing, was shewn this Attestation, found a great Similarity, therein, to his fathers hand & therefore ignorantly concluded, it to be so, tho, in fact it was his own; but he was not the only Person deceived by the Similitude, for Tho.s Hunt to 67 Art. swears he was acquainted with the Hand writing of J. Gann Deed & that he believd it was his Attestation to Cod: C — So much, I thought necessary for me to say, in order to vindicate an honest but ignorant Husbandman, from the Suspicion he might possibly be open to, for has.d endeavoured to impose on the Ct. I did not mean it with any expectation of validating his Testimony, nor indeed have we Occasion for the Assistance of any Witnesses at all, to establish the Codicil in Qu.n