the Hand writing of the Testator being sufficiently proved.
For 2d C.B. Gilbert in his Rep: fol: 260, says" If a Will be made of Goods, writen in the Partys own hand, without any Witness at all, it is allowed to be good, & the Statute doth not require any Witness, to Chattels only.
Swinb: fol. 253." If it is certain the Testament is written with the Testators own hand or Subscribed by him, the Testimony of Witnesses is not necessary
Comyns 452 . . . It was so held in Wright & Walthoe 1710 Worlick & Pollett 1711 –
See 2 Burn 553 . . . Brown & Heath 1721 Loveday & Claridge 1730 Lembery v Hyde & Mason 1735 – If this Doctrine holds with respect to a Will for the Disposal of a great Personal Estate, a fortiori, it must operate with regard to a Codicil, by wch trifling Legacies are bequeathed – Having solved the Difficulties under wch the 2d Codicil laboured, I proceed to Cod: D the Instructions for wch Mr Sam: Foster says he received in writing from Mr Wm Foster of Bourn a near Relation of ye Deed, & principally concerned for him in his Affairs, that he made a draft from sd Instructions, from wch Draft Cod: D. was copied; that about 17 Feb. 1746, he by Deeds Appointment Direction met him at Mr Speers, when it was read over to, approved & executed by Deed, in ye presence of dep: Robt Chamberlain & Frances Crowson since Deed – In this Acct he is confirmed by Chamberlain, & Crowsons Attestation is sworn to by Paul Lowth & Paul Lowth Junr Father, Brother in law to sd Crowson – Mr Foster says he has searched carefully, for, but cannot find the sd Instructions at his House; Upon these Foundations rest the Will, 3 Codicils, wch I flatter myself, will be thought sufficient, by the Ct, to establish them as to the Instructions & Execution; if so, the next Point for your Consideration, will be this, Whr they are liable to be set aside, on account of any defects in the Testator, either with respect to his general Incapacity, or his particular insanity at the times they are dated; here it will be proper forme, to enquire minutely, into the State of the Evidence on both Sides, that by a Candid & impartial review, the Ct may be the better enabled to form its Judgement with Precision; In a word, thus it stands; 25 Witnesses depose to the Testators Sanity & Capacity at different Periods of his life, viz. from his Infancy till within 6 years of his death. All these Witnesses stand unimpeached in their Characters; they consist chiefly of Persons, intimately connected with the Deed; who were frequently in his Company & used to his Conversation; several are Men of Fashion in the Neighbourhood, & reputable Clergymen, who are uncontradicted in the particular Facts they speak to – On the other Side 48 Witnesses are examined to his general Incapacity; of these, 21, were never in Company with or spoke to the Deed; 3 form no Opinion of Deed – 6 cant speak to his Capacity, 8 cant speak to it from 1740 to 1746 – 5 speaks from Report & 5 form their Judgements from the Length of ye Will, Deeds Appearance, manner of Speech; So that there then remain only 4, of this Regiment of Evidence, who depose to the Point; the first of these, Henry Clos, if there was no other Objection, is most unfortunately contradicted in every Assertion he advances, by secr: Persons; wch must necessarily overturn & destroy his Evidence; but when the Badness of his Character & the Disavowall of his Receipt to Deed, for Wages, is thrown into the Scale, the Ct cannot hezitate a Moment whr it shd be rejected with Contempt.

Dr Stukelys Evidence is given in a very loose & unguarded manner; how able he is to speak positively on this Head, will appear, from his Answer to first Interrog: where he acknowledges, he never asked the Deed any Questions. The Observations of Mr Wych, were made, during the minority, of the Deed, & therefore cannot affect him with respect to the validity of the Will & Codicils; besides, this Witness owns, he forms his Opinion chiefly from Report – the last Witness, J. Bigadike, swears positively to Deeds Incapacity from 1738 to 1746, but assigns no reason for framing this Opinion: when therefore you consider how strongly Deeds Capacity & Sanity is supported by our Witnesses, & how flatly they contradict her Depos, I hope you will think the weight of Evidence is greatly in favor of my Partys – As to Custody & Imposition, it is denied by 15 unexceptionable Witnesses, well acquainted & conversant with the Deed – & con: 12 Witnesses assert it, 4 of whom never spoke to Deed, 4 cant depose from 1738 to 1746, 2 judge from Report, Wyche contradicts himself in answer to 6th Interrog: & Henry Clos's Evidence will not stand the Test of Examination; as several of the Opponents Witnesses, have judged hastily of Deeds Capacity, from his Appearance & manner of Speaking; we have shewn that no Inference can be drawn from it – 11 Wn (uncontradicted by Mr Wrights,) swear positively to his had an Impedt in his Speech, wch to Persons unacquainted with Deed, might give an unfavorable Idea of his Understanding – Dr Clarke & Mark Addy confirm this Account – the reason of Deeds omitting Miss Wright in his Will is accounted for, as on acct of her Fathers pleading the Statute, in Bar of Payment of a Debt to old Mr B. Anne Moore & Wm Close acknowledge they have been told the same Story – 7 Witn: depose that Deed managed his Affairs from March 1738 (when he came of Age) to 1750 & inform you of various Transactions, in Business, they had with Deed – 5 Witnesses deny he managd his own Affairs, but 3 of these viz. Tyler, Sherman, & Pinkham are favorable to us; those is immaterial, & the Credit wch is due to Clos's Evidence, the Ct is a competent Judge of.
To corroborate & confirm the Assertions brought by us, you have different Circumstances, wch put the whole beyond a doubt; in 1739 the Testator was nominated High Sheriff of Lincolnshire, & served that Office, in a becoming manner; he acted as Churchwarden for 4 or 5 years successively; he wrote Letters to different Persons, on Business, with a degree of Caution & Skill, not very common to Country Gentlemen; those Letters are before the Ct; as also his Account Book, wherein he noted his current Expences; & another, wherein you find entred, the different Accounts of his Tenants, in Dowsby Estate, with very particular accuracy; These Concurrent Circumstances, with the Depons of so many Persons of rank in their County, in our favor, added to the internal Evidence of the Will itself with the 3 Codicils, will I doubt not, be sufficient to entitle us to your Sentence confirming the validity of the Papers in Question. But lest any doubt shd arise, as to the particular degree of Capacity necessary, when a Man makes his Will I will beg the Indulgence of the Ct, to state what is delivered on this Subject by the best Writers on this Subject.

Swinb: Pt. 2. Sect. 5. fol. 79. } If one that is Lunatic, but not continually, make his Testament, it is not known whr it was made whilst of sound Mind & Memory or no; then if the Testament be so conceived, as thereby no Argt of Frenzy or Folly can be gathered, it is to be presumed, the same was made during ye time of clear & calm Intermissions

Godolph: Orphanage Pt. 1. c. 8. fol. 11. 12. } Lunatics if they have Lucida Intervalla, may make their Testaments during the time of such freedom from the Lunacy; but if it is not certainly known whr the Testament was made in or out of his fits of Lunacy, if no Argt of Folly or Frenzy can be collected by the Testament, it shall be presumed to be made during the Intermissions, so adjudged to be good, tho it can not be proved that the Testator used to have any clear & calm Intermissions, provided the same Testament be wisely & orderly made – In contrary Depons those Witnesses are to be preferred wch depose that the Testator was of sound Memory

Vinnius in Instit. Lib. 2. Tit. 12. §1. . . . . Si proferatur Testamentum conditum à furioso, quem certum est habuisse dilucida Intervalla, incertum autem sit quo tempore id fuerit, & si quidem ita ordinatum fuerit, ut quivis Paterfamilias sana mentis, sic disposituros fuisse judicetur, pro testamento respondendum, & credendum intervalli tempore factum; Palam enim est, unum tantum Tempus inspici Testamenti facti, ac sufficere eo Tempore Testatorem habuisse Testamenti factionem, cui tempore mortis non habuerit –