Lib. 7. c. 8. . . . . Upon the same Principle was founded, the Determination of the Centumviri reported by Val: Maximus where he speaks de Judicani Hominis certa de note Insania Testamento, quod a Centumviris confirmatum ait magis quid Scriptum esset in Tabulis quam quis Scripsisset considerandum existimantibus

Ld Coke part 4. Beverleys Case . . . If a Man who is of good & perfect memory makes his Will & afterwards by the Visitation of God becomes of unsound memory, this shall not be a Revocation

Upon the whole, the Proof offerd by our Opponents (if it can deserve that name) has been chiefly, Probabilities, Circumstances, Conjectures & Suppositions; whereas we have encountered & disproved even them, by far greater Probabilities, much stronger Circumstances & also by such Evidence as will, I hope be deemd convincing & decisive by the Court.

Dr Collyer . . . . . The Circumstances & Evidence in this Cause necessarily to excitate it lie in a narrow Compass, the Qu: is wh: the Deed had a Capacity equal to the Will now before you? Dr Wynne has laid down the Doctrine of Lunacy out of Swinburn; if he had said, the Testator must have a Capacity adequate to the Act, he wd have spoke to the Point; they have quoted Cases to shew Recognition makes a Will good; for If I draw a Will & the Person for whom it is intended adopts it, it is good, that is the Syllogism touch our Argument is to be reduced; but the Will & Cod: now before you are the works of a Person who must have a legal Head & quick Recollection, it contains 50 Legacies & varibus limitations; I shall first beg leave to consider y internal Evidence; it is a Will disposing of Freehold & Copyhold Lands, to establish wch there is the positive, resulting, internal, & the Collateral Evidence - Is it not very extraord: that not a single word is dropt amongst his numerous acquaintance, that he had made a Will; Mr Fosters Clerk knows nothing but the Execution, & nothing of his Capacity, except from his doing an Act wch Wise Men always do - they want to restore y Credit of Death, why? the Ct admitted our Allon, the Answer confesses & the End is that the Man is no good Witness; It then stands on y Evidence of Foster & Rubins, how what Account does Foster give? He sits down to draw a Will, make very material Alterations, & the Instructions are not in the hand writing of y dec: Deed; the man himself cd have made the Alterations with his own hand if capable of receiving Ts Directions & Explanations; it is very odd to explain a Mans own Act to himself; the Estate is altered, all the Limitations in the Instructions were Mr T's own - he says Deed had Capacity to do what required common Thought & Judgement; is this a Common Will? it requires a legal head Ts Evidence is evasive; he shd have said Deed was capable of making such a Will, he owns, he was rather a weak man, but say the Gent: this refers to his Body; how can that be when they are speaking of his Mind? I dont think Owens Legacy improper, he desired it, but in order to preserve such a Legacy, he was to preserve an Appearance of Sanity & Regularity; it is very likely Owen, when his Master came home, examind what he had spent, made him then set it down - There is no Evidence that Mr Wm B. was dead at that time, but it is material, because in Cod: D. Wm Foster himself is benefitted & Wm B. struck out, one additional Trustee is named; here is a Codicil produced by those who are benefitted - their Evidence answers my purpose; Sir T. Trollop says, he doubts wh: Deed was able to converse sensibly for half an hour together;

I wd not say he was an Idiot & unable to tell his Name - We intend to produce Person to prove what was the General Opinion in y neighbourhood of his Capacity, immaterial if we had produced Beggars, we did not offer them as his Acquaintance; We will set Close agt Hunt; Concessions are necessary on both Sides - Hounds do produce Company, but such Company as does not require any great Capacity - He understood no more of Law Terms, than he did of Greek; any Child might know the Lines upon the Globe; but it seems the Account Book is the Clincher; I must read 2 Letters in the Case of Finney v Jennings & Woods at the Delegates - as follows: Recd Sir, I wrote to Mr Gay to come out to witness my Will Henry Roberts - Mr Gay, enclosd I send you my Will, pray let me know whether it is according to Law or not; I am to have an Estate come to me, & have none nearer than my Sister - These Letters were all wrote with his own hand; afterwards upon an Inquisition taken at Exeter he separated Gold from Silver, & in the Kings Bench, objecting to a Witness, he stood up, & said, she is perjurd; That Mans appearance was the same as this, there was no memory & . . . . . but upon Person deposing to his being unequal to such a Will, the Delegates declard agt it; let the Letters be ever so much his Hand writing, they must be by Dictation; if his Character was that of a Lunatic, & at last a Commission issued agt him, the resulting Evidence labound by the Gentlemen concludes agt them - I knew a Boy who cd copy, but cd not read; from the Irregularity, they are not the Mans own; I dont put it upon his Capacity at Large, but with respect to the Act in Issue; I allow the Codicil to be written with his own hand -

Dr Harris . . . There appears no previous Declaration, of the Testator intending to benefit the numerous Legatees mentiond in his Will; nor any subsequent Declaration that he had done so; I dont insist the man had no Capacity at all, he might apply to the Study of the Globes, & play at Cards with his Neighbours, who were glad to see him, I suppose because he lost his money; I cant agree with the Witnesses who depose to his had: a strong Capacity; Sir T. Trollop says he cd not hold a Conversation for half an Hour - Mat: Ringham their own Witness says he came into Church with his Hat on; the Inference is, that it was improper to administer the Sacrament to one who knew not what he did; Judge Page did not object to him on account of his Fits, but his Defect of Understanding, you are told he spoke drank to no body at the Assizes; what sort of Letters cd such a man write - Mr Sam: Foster was indigent from whence I presume he was not above Temptation to do an irregular thing; The Deed was an Automaton, he cd move but must have something to set him a going; Dr Mariot calls the Acct Book, a Waste Book; why have we not the Posting Book, it is not cast up; why have we not the Acct Book of the other Estates, he had more than Dowsby - Thatcher says he never did Business for the Deed but once, yet there are sev: Entries of Moneys pd him for Business done for the Deed; If I may risque a Thought it is this, that the Acts were wrote by Owen & given Deed to copy for his Amusement; if they are not real Accounts, they are nothing - Stopher Thompson gives the whole Transaction, Deed had Gentlemen Overseers, who settled the Acts of his Estate, Owen was his house Steward & cd not attend to the Estate likewise; The fondness of the Father proves nothing, he might think the Son wd recover, All Fathers think well of their Children - As to general Capacity, one Witness says, Owen used to give him a particular Look; he went backwards & forward whilst the Will was making, & probably did not then drop that Look; it is said he jogged him, lest he shd eat too much, what Gentleman

not true