wd suffer such Liberties? how can you reconcile Sir T. Js
Depon that he'd not converse sensibly for ½ an Hour, yet cd
make such a Will - Wyche says he cd play at Cards, but not
make such a Will; How came he to sign these Papers, was
it a sudden thought? It is odd the Instructions shd not be
in the hand writing of this ready Penman? does nobody know
who wrote it? it appears Mrs T. was sent for, was told it
was to make a Will, but the Music Master being present, they
defer it till after dinner - when the first motion comes from
S.T. to retire into a private Room; he must know his Capacity
& shd have desired Assistance; then says Foster the Deed took
out the Instructions, not a word is mention'd of Law Terms
they contain'd the names of a number of Persons, whom
it is impossible he cd remember so as to write down; I
will compare the Will & Instructions with the alterations,
what are they? Sam: T. introduces Wm T. who is thought
to have too beneficial an Interest, therefore the Heirs of
the Body of Redmond & Wm are inserted, this is done by
a line drawn over the regular lines of the Instructions
from wch the Will varies very much; they looked on the
Deed like an Image of Wax - In his Instructions, he said
Lovers, yet did not specify them, tho, he cd remember 60
Legacies - Tho, all these pains are taken to explain, yet they
extend only to the Instructions; what not know wh: the
Draft was read over? if it was not, he never heard the
technical Terms, they cd not be explain'd to him: the whole
was done in the Afternoon; it is very odd that Foster Clerk
was not employ'd to copy - As to the 3d Cod: the Instruction
came from the Person who was to be benefitted, consequently
are not to be credited; he therein confirms all the Legacies in
his Will & first Cod: but takes no notice of the 2d Cod: from whence
I presume he knew nothing of it - Butler & Parminter the
reasons are in general good agt a Persons contradicting his own
Act, but if a Person is in low life illiterate, he is allowed to de-
=pose agt his own Act, if fee is suppriz'd into the Execution,
Skeath must be totally rejected, or we may use him: Sam: T.
is the only Witness to the Instructions, he is indigent, his
character is at Stake, he struggles between Debity & falsehood;
he must mean, the Deed was capable of doing Things with re-
=quired common Thought, but not any little those wch deman-
=ded Serious Reflection; Chamberlain never saw Deed before,
I must leave S. Js Credit with you; the Instructions are
not written by Deed, the came from him, yet wanted Expla-
=nation, this is very new tome, they cd not be made as they
ought with proper Deliberation -

Dr Calvert. - - - - - I must trouble you with a short word on the same Side;
this Will & Codicils are set up by the Resid: Legr: the most
material Objection to wch is the Capacity of the Deed, wch
when doubted, I must insist, is to be determined from the act
itself; every Case must stand on its own bottom, & is not to be defeated
48 Witn: are produced to shew, he was not esteem'd to have such
a general Capacity, as the Gentlemen wd contend for; from as
Series of Actions such a Judgement is to be formed; they all knew
him from his Infancy; when they say, they judge from the
Appearance, they dont mean from Seeing him once, but from the
general Appearance he made in the Neighbourhood; the Reputa-
=tion was confirmed, by what was said when he made his Will
they wd not beleive it, because he was incapable; what Im-
=pression did the Report make on those who beleived a Will
was made; they said, Owen made it; This admitted his Capacity
& Memory, was impaired by Epileptic Fits; the difference then between

us, is, when the Incapacity commenced; the Witnesses date it at different
times from 43 to 47 - Wright says, Deeds Capacity failed in 41. he taught
him Musick from 36 to 41, & believ'd he cd make a Will till the latter end
of his first attendance; many of our Witnesses, believe him incapable from
their first acquaintance; we must take such Witn: as the Occasion allows
to prove a fact; Poor & Honest, is a maxim - a Person of best Capacity
may forget the names of Persons, but not repeatedly forget the name of the
same Person; want of memory, so grossly, is want of Sense - I never
knew the Squire of a Parish had a liberty to transgress Decency, in coming
to Church with his Hat on, all People are on a footing there; a Child behaves
well sometimes - Sitting like a Post at the Assizes, is an improper Be-
=haviour; if he had behaved like a Sheriff, they might have produced Witn:
to specify some particular Acts done therby him; Everybody knows how
Sheriffs are appointed, the Clerk of the Peace returns the names of those
who are proper to serve, & if no Objection is made, the Appointment stands
of course, if objected to before the K: & Council, they are withdrawn sometimes
he is appointed Ch: Wn too, being considerd as a man of fortune; Owen
executes the Office; there is no great Capacity required to have ye Windows
mended; Wright deposes to his becoming a Proficient in Musick after the
time he is said to be incapable - It is said he visited, behaved, & was receivd
properly; this is no Arg: of Capacity, if he was only received as a Person of
Fortune - It is deposed Mrs Toller - used to ask Owen what she shd help
the Deed to; wd such Behavior be used towards a Person, in his right Senses -
Sey: Toller did not stay with him after Dinner, but went out & took his
Walk as if nobody was there - We say he was in the Custody of Owen, &
liable to be imposed on, if so, he was consequently by any one, introduced
by Owen whose Behavior does not appear to be only the familiarity of a
Servant, viz taking his Apples & money away - The Items in the Dec:
Books appear incoherent Sums plaied without Order or Design, the
Dates are confused, Payments mixd with Receipts; this said the Day Book
dont appear so; we dont say the Sums are fictitious, but that Owen gave
him the Dates &c to copy, wherefore they will correspond with the Entries -
Unless the Deed appears to have had an Intention to dispose of his Effects
in this Manner, it cannot avail; the first thing to enquire, is wh: Deed
made any Declaration with respect to his intended Disposition; it is said, he
was overheard to say, he wd take care of the Poor, but that cd not apply to the
Will, he having given only 35£ to 7 Parishes; If Instructions come from
the Deed himself, they prove his Intention, I will not contend they shd be
in his own hand writing; Dr Wynn said, the Instructions were peculiarly
adapted to his Capacity, I agree they were, for a Will to be imposed on
him, for they were ready drawn; he brought them, clearly not understanding
what they were, because the Contents were to be explain'd; the Explanation
applies to the Instructions: a Person need not understand all ye technical
Terms, but there are none in the Instructions, so none to be explained,
a moderate Capacity was sufficient to understand them; Dr T. did
not chuse to proceed before Dr Green, the Motion came from him
to retire; Mrs Wrights Relationship dont appear, so no Arg: is to be
drawn from thence; T. inserted the Trustees without any directions
as far as appears to the Ct. he did not go home to draw the Will
& bring it next Day, but stayd at Rydal, so secretly was this affair
transacted, that Rubins Js Clerk, tho, in the House, was not employ'd to
copy it, & knew nothing of the Instructions; does not this afford
reasonable grounds of Suspicion; the Execution was short, merely
mechanical, nothing paid to shew Deed knew what he did at the
time - as to the Cod: what was truly laid down by Dr Burrell in
relation to the Support of Testamentary Papers without Witnesses, will
not hold as to executed Papers, propounded as such; Owen sent for
Skeath to attest this Paper in his own favor; It appears to have
been wrote from a Copy, & possibly the Deed might have received the Ins-
=tructions from Owen himself; the reason for the 3d Cod: (viz ye Uncles
death) does not appear, if true, no reason for the Alteration, the Legacy
wd have lapsed, as those of several other Legatees, on wch account no