Alteration had been made; in this Codicil he has secured the Legacy still stronger; Mr Wm T. knew this, there is a Clause whereby he confirms all the Bequests before made; & if the Deed had it explaind, he wd have known the Codicil of 1748 made an Alteration - There is not sufficient Evidence to prove the Testamentary Papers, if there was no doubt of Capacity; They say there was no Room for Suspicion, for nobody had an Interest to impose the Will. I cant point it out, but Owen has £400, Mr Wm Foster £400 besides the Reversion of a moiety of the Estate; the Ld will have a clear proof that they did not influence, I think had: shewn he was out of his Senses when he died, if I can shew he was sometimes out of his mind, the onus probandi lies on them; we have given Instances of Furor, they must give proofs of this Sanity at the time of making the Will -

Dr Marriot..... The Deed was obliged to Owen for checking his voracious appetite, wch frequently brings on Epilepsys, especially when the Party is subject to them, the Behavior of Mr & Mrs Tollard seems to be a proof of their austicity - Mr Nos was led in his Opinion by the Difficulty the Deed must have to understand Law Terms -

Dr Wynn..... The Gentleman who spoke first thought we took a great deal of unnecessary pains, the Drs who followd, seemd to admit the Deed might be a person of ordinary Understanding but said, we shd prove he had a Capacity to make a Will of this kind - the Authorities I quoted were to shew that a very low Understanding wd be sufficient to make a Will; if the other Doctrine obtained nobody ed dispose of their property, a Legal knowledge is not required; It is said there are Erasures in the Instructions, they were probably read; it seems he has struck out some words to insert legal ones, but they are conformable to the Instructions, there is no material difference between the Will & Instructions; the limitations are in fact the same; it is observd as remarkable that there is no Declaration on the Part of the Deed; surely the Guide he gave Foster of his Fathers Will, mentiond by him has been forgot, as also the Expression overheard by the Maid Servant that he wd remember the Poor; the probable reason why it did not appear, is, that he had considerd every Relation so that we ed not produce them as Witnesses - Mr Foster is called a needy Person, it does not appear wh.r he wanted to borrow money for himself or others -

Dr Hay Judge..... The Qu.n before me is, concerning the validity of the Will & 3 Codicils of Tho: Burrell Esq Deed? the actual mechanical Execution of the Will & 1st & 3d Codicils are proved by S. Foster who is confirmd by Rubins with respect to the Will; the 2d Codicil is proved rather by the hand writing of the Deed (wch Foster & Hunt depose) than by the Witnesses, for Gann appears to have been mistaken; I do not enquire about Sheath, for I shall lay no Stress on him, the Execution of the 3d Codicil is proved by 3 Witnesses; the principal Qu.n then to determine is the Capacity of the Deed, in wch I have great difficulty; it is agreed, he was a Lunatic many years prior to his death, 3 yrs before that period, he is found so by Inquisition; the Witnesses speak to a much longer Incapacity, some of them say 10 or 12 yrs before his death; the Qu.n then is, wh.r he had a Legal Testamentary Capacity, when he executed his Will & Codicils, many Ws speak of him as totally incapable & under the management & Custody of Owen, they depose to diff.t times; Dr Clerk says he never had

any Capacity to act in the most common Occurrences of life, of answering Questions properly; or writing down Legacies; if he had no greater Capacity than Dr Clerk describes him to have, he certainly ed not have made the Will &c - The Witnesses for the Will, admit he was not a man of strong Understanding, but was rather weak & deficient in his Intellects; Sir T. Frollop answers in that manner, that he was rather a weak man, & he doubts if he was able to reason by way of Argument - Elig: Kowgrave thinks he ed not draw a Will, but if it was ready made, he might understand it, Ro Wm says he was of himself able to draw a Will; Under these Circumstances, it comes to a Question of law, what degree of Capacity is requisite to entitle a man to make a Will? this Qu.n is difficult to determine - if in general, he knows what he is about, a knowledge of the law is not required; if he knows there is such a disposition as is read to him, it is not necessary he shd draw the Will, or give the Instructions; if another Person makes a disposition & the Testator knowing the Tenor, Extent & Effects of the Proposition, ratifies it, it is good - This is a Will to benefit Relations & Heirs at Law in a certain way, drawn by Mr Foster in legal Terms, I wanted the Instructions to see wh.r they were better adapted to a plain Understanding than the Will is; Many Interlineations appear in the Instructions, & Additions in T.s hand writing, some lines are drawn through with a Pen, by whom, is uncertain - Mr T. deposes the Deed said on his coming to Ryal, he had sent for him to make his Will, but it being near dinner Time, no more was then said; that after dinner he started the Subject of the Will again, & if T. is to be credited, he gives a strong Instance of the Testator knowing what he was about by his Directions to T. to make his Will conformable to his Fathers Will; many Things descriptive of & identifying Persons, are insert.d in T.s Hand, but they are immaterial - T. adds, that soon after the Execution of the Will, the Deed gave verbal directions for a Cod.l this is very material; it is improbable that Owen, or any one who is said to have him in Custody, wd have made that Codicil merely to dispose of a few Rings; the reasonableness of a Will is no conclusive Proof of Capacity in a Testator; a capable Man may make an absurd Disposition; an Incapable Man can make no disposition at all. There is a Circumstance wch might have come into Consideration, it was left to Interrog.s Miss Wright shd have been exam.d touching the Debt her Father had declared to pay - I suppose the Deed upon conversing with T. told him, who he wd have benefitted, for the Names of the Resid.n Leg.s are in T.s hand writing - Propriety has this Operation, it will go so far as to determine in favor of that Evidence wch supports, in preference of that wch opposes the Will - This is a very doubtfull Case; Drs Shakely & Clark speak strongly to the Testators Insanity & Incapacity to make a Will from his outside Frame; others form their Opinions from his Appearance & other Causes; the Resid.n Leg.s admit his Appearance was inferior to his Capacity; I must take it upon the whole with Mr T.s Answer to the Interrogatory, that he had a Capacity to do what a common Capacity could do - The facts being so I must look into y.e Circumstances & give my Judgement in this very difficult Case from Inference There is one Witness who goes far to satisfy my Mind of the Deeds Capacity to do a Testamentary Act, that is Mr Kowgrave whose Evidence stands unimpeachd; he says, that a little before the Deed made his Will, Green applied to him to speak to Deed in behalf of Redman B. he did so, & the Answer of the Deed is sufficient to prove his discretion for a Testamentary Act, & that he was not such an Idiot as several of the Witnesses fancied him - He sends £120 to pay his Debts & cloath him; Some Stress too, in this doubtfull Case, is to be laid on the fathers Will & comparing it with Deeds Will - The Father died 1733, if he had thought his Son an Idiot, he wd have appointed some Trustee for him - I lay no great Stress on his being Sheriff or Ch: Wn; improper Persons are often chosen; I see no appearance of blandestinity or Imposition, wch must have come