belonged to him. I wd not go out of the Way to make Reflections but Counsel is justified in saying all that appears in Evidence. the Point I put it on, is, there is no Proof of the Codicil; I know Instructions are not necessary, if the Deed knew what he was about, but we say there was a great Defect of Capacity: Declarations previous & subsequent shew a Capacity, they denote the animum testandi: but those Declarations must be clearly proved, otherwise they will have very little weight; the Ct will not regard them where they are contradictory. the Witnesses must be unexceptionable. If by Mrs Declarations were good we shd have very little Grounds to stand on, but they are concerned in making & attesting the Codicil. Mr Wms. begins his Act. in Decr 1760. he was told by the Deed he was ill: the next Day is, have you executed the Codicil? Wms. makes a Codicil for Deed gives every thing to his own Son, after the death of Mrs. after he had so done, he knows the Deed disapproved it, but bid him draw a Cod: I wd give his Son something; this shews a Busyness about Deed; a Person may dispose of his own, as he will, but if directed to dispose of the property of another, he shd consider other Relations, not leave all to his own Son. Mr Wms & Mrs G. meet, each produces the Codicil most for their own Benefit, the motion for neither comes from Deed. the Legacies of 1000 to Mrs G. 1000 to J. S. & 100 to Miss Howard arise from the Parties who are to be benefitted. Mr Wms is the only by as he has laid the Scene. no others cd be Witnesses, there appears a Capacity in them to get what they cd. after this Introduction, I must now go to the Execution. when Variations are great they must not be deemed mere Mistakes. Wms says he received Instructions before, that Deed executed the Codicil after dinner. Pearson denies this, says it was executed after Dinner. by Wms Act. it must be a diff. Paper, for Mrs G. brought in her Cod: between the signing the first & 2d. Deed ordered 5 Legacy to be inserted in the last Codicil, the whole consolidated: Could a Person, reading Mrs account, suppose them speaking to the same Act? B. says it was signed before them all, but was sealed afterwards. M. contradicts this. P. dont confirm B. with respect to the Execution, expressly contradicts as to the person who desired him to sign, that he signed by his Masters order, not at the Desire of Deed. Ennolds cd not be at the Signing, he must be guilty of a falsehood, not a simple Mistake in saying, it was read over 3 times; he is contradicted by all the Witnesses, who declare nothing was said by Deed at the time, (I have left your Son £1000) It can't be relied on because contradicted by as good authority, as it is asserted; these may be an excuse for a slight difference, but this is a Series of Contradictions; It follows from what B says Deed was sometimes capable, sometimes superannuated; it is incumbent on the Gent.n to shew he was sane at the time he made this Codicil. It will have weight with the Ct, if it is shewn Deed was insane previous & subsequent, especially when there is a Doubt of the Capacity, at the particular period; we have exam.d 3 Servants, 2 Surgeons, & a Neighbour, they have br.t home to the time of Execution. the misfortune is, that such Expressions, as picking little black Devills off his Legs, are Subjects of Ridicule in general, but they are too serious, melancholly to be so here. he cd not be persuaded he was in his own house the Observation on Langley & Glover is so minute, as not to be taken notice of by the Ct. they have argued agt great Contradictions being regarded in their own Witn.s but object to trifling Variations in our Ws. they disagree, as to what became of the Cod: after the Execution. M. says Dee: gave it to B. B says he himself delivered it to G. these are essential Contradictions. General Incapacity is strongly deposed; their 2d Allegation was to establish Sanity at the Execution, yet they have not produced a single Instance. Stephenson, Bateman stout on a Scheme to try to get 200 out of the Man in that Condition. It was well said by y.r Ks Advocate

that the Paper signed shd have been exhibited? how came Mrs Wms to guide Deeds hand; if he was as well able to write, as at another time; was it not an odd time to pitch upon to execute a Codicil; in these Cases there are always Contradictions, the Ct will find out a more moderate way to express itself than by saying the Witnesses are perjured. if there was a doubtful Capacity during the whole time the Ct will expect a continued regular Capacity during the Execution.

D.r Hay. Judge

This is a Question depending merely on Evidence & fact, I wont trouble myself with observeing upon what arises out of the facts It must be taken on its own bottom. the Exors had a right to call on her to . . . . . that Codicil, because it will defalcate from the Residue. Mrs G. examined 5th on a special Plea. Wm Barwell the Writer. Pet.r Mckenzie. Ennold. Pierson & Hy Barwell. it has been said & truly, that it is incumbent on the Party propounding, to prove it: if a Doubt arises on the Capacity, the fact of Execution must be established, not contradictory: the materia Witn.s. Wms is Brother to the Exor, he is very circumstantial & particular, he went to visit Deed on the 14th in the morn.g & on the Interrog: says Deed was asleep, being old; Deed was then waked & brought down when Wms asked how he did, he replyd in a Bad way, the Surgeons said he had a Dropsy & after the usual Questions, he says, not in an abrupt manner, Sir, have you executed y.r Codicil? this Transaction was subsequent to y.e Birth of Wms Bs Son, he meant y.r Cod: now propounded, or that given him by y.r Dep.t wherein he had given every thing in reversion to his own Son; what he deposes must be. Wms says lets see how you did make a Codicil; Deed answers he had not executed it, then B. reasons with him, Deed answers Mrs Browne's children are as near as you; though in fact they are not, yet it must be understood from thence, Deed had as great an affection for her Children. B. drops the Discourse: this shews he made an Application to be considered in the Disposition of the Deeds Estate. then B. states what had been done in Consequence of the former Conversation; it is very sensible if B. is to be believed. Deed adds, I always intended to leave you & your Son 1000£ then bid B. draw out a Codicil, he did so, Deed read it over, signed & sealed it immediately. it is material to establish the Credit of B. this is Evidence there was such a Paper. Pierson is examined by the Exors, therefore cant be objected to by them. it is said B. dont affirm P. was present. P. proves he was. B. might not take notice, he does not P. was not present. it is very material as preparatory to the Execution of the Cod: wch the Witnesses place in the afternoon. B. then goes on thus: Hy. who was present at the End of the Conversation puts in for a Legacy; the Deed appeared quite passive, did not speak. Mrs G. in a hurry goes out. it is true nothing proceeds from the Deed, B moves the affair first; after gaining his point, Mrs G. returns, puts in her Claim again; there is no occasion for the Paper produced by Mrs G. the Legacy of 1000£ to B, 1000£ to G. it is admitted, did not move from the Deed, but the 100£ for Miss Howard, did; to answer the Objection of the misrecital; this Codicil was drawn by the Deeds direction from Mrs Gs Paper; she mistook the Date. there is a blashing as to Circumstances in the Execution; B. dont know wh.r all the Witnesses were present when the Paper was signed. Mr Mckenzie says, Deed sent to him to attest the Codicil he had mentioned before. Ennolds says, the Deed said, "There I have left your Son 1000£." Pierson well remembers Mckenzie's name, being subscribed, when he signed. Rd B. bid him sign. It is clear something was done after Dinner, as well as before Dinner. The 2d.a now comes to the Evidence, how the Capacity is proved at the time of Execution. It is talking in Circulo, as to the Declarations before, after Dinner. The Objections to the Witnesses out of the Internal Evidence of the will are not legal or fatal; that Wms, his Wife are interested consequentially because the Son is immediately; by our Law a Son or Father may be examined for each other, are competent Witnesses. the next Objection is that B. has given an Account, to induce a foundation of Incapacity, viz. that Deed was more confused after Dinner; this is a Circumstance much to Wms Credit, that he wd not conceal any thing, he says Deed was not the same after as before Dinner, but that he was not liable to Imposition as he believes, considering the Situation of the Gent.n there is no reason to impeach his Evidence, because he says he was not at all parts of the day, equally capable; this will agree with the Account of the Witnesses produced for the Exors, who saw him when he was confused, talking about Black Devils &c. another Obj.n to B. is that Pierson is a positive contradicting Witness; but he is not

* connected with what he answers upon y.e 9th. Schedule, when examined upon Interrogatories for 8 Codicils, with must be exhibited in respect to the Disposition of this Estate.