Such Issue shall die before 21, she then devises the whole Residue to B.W. except 8 or 9000l, wch she gives absolutely to her Daur. In the Codicil she charges her Estate, Real & Personal, with 4000 to be disposed of by her Daur; if she shd die without Children & also on the same Contingency 1000 to Miss Eyre; & she gives 200 apiece to Mr Jos Jones, Mrs Jones. These Persons (by their own Exhibit) Decd expressd great Animosity agt; therefore it is not probable she shd leave them these Legacies; to Mr Winchester on the same Event, she leaves 500. to Miss W. 200. to Mr Langdale, a Witness to the former Will 300; this Will Cod: appear, made with great Art; considerable Legacies being given to those, who cd have been material Witnesses agt the Will; & it appears drawn so, that B.W. will have £20000. Mrs S. has the whole Proceeds for her life, there is a Provision, if she shd have Children, but none for her Grand Children, if her Children shd die before 21. There is another Circumstance I must mention; that this on the face of the Will appears very specious, that B.W. appears only to have a remote contingent Interest; but in truth, he had a Certainty bequeathed him; at the Time this Will was made, Mrs Strode was upwards of 40, without Children, & divorced from her Husband. They have examined the 3 Subscribing Wts to the Will & Codicil; viz. Jh Prestage, Jn Pearson, & Benj: Sparkes; when the Depons are read, you will observe, the 2 former, speak not to the Instructions, or reading over the Will; Sparke indeed speaks to Instructions, but only, as coming from Wood, & on Interrog: says, he received them from B.W. at ten different Times; In his 2d Examon, he says, he beleives, the Will was read over by her Alterations; It is not material what was said, or read to her, it is plain she did not understand the Contents. Mrs S. had a Monion agt W. & E. Exors, to propound the first Will, wch they refused, because contrary to their Interest; & Mr E. is a very unwilling Witness: On their refusal Mrs S. declared, she wd propound it, & gave an Allon, pleading Decds being in Custody at B.W's at Parsons Green & at Cornforth's in Bond Street; Isabella Haslom proves, she went to see Mrs Gough at Parson's Green, when Decd declared to her "she was beset by a parcel of Villains; that she cd not say or do as she pleased; & bad Deponent (Servt to Mrs Strode,) go to the door, to see if any body was listening; She speaks clearly to the Custody at P.G. & a much stronger Custody at London, where she was often denied admittance to Decd. As an Instance of the Custody, she says, Decd gave her a Penknife in a Case, & bid her take care & give it to her Mistress; she knew it was one she valued, being her Uncles; In the Penknife Case, was a Slip of Paper, contain these remarkable Words written by Decd; "Fear me not, I will not wrong thee, that, depend upon; It is proved Decds writing by Eyre, & is endorsed Nov: 23. 1762 — Davis proves Decds Affection for her daur, who says, the day before her death Mrs S. came to see her, on whose Entrance, Dep: quitted the Room, but returned, as soon as Mrs S. went away, & asked Decd if she was not very glad to see her Daur, she replied, Yes, her Heart overflowed with Joy. The Exors in answer to our Allon exhibit a Paper, wch I think, wd have been properly exhibited by us; it makes more for us, than them; It is said to be a note put into a Bag, with 500 deposited by her in Cs Hands, & to contain the following Words "This Day, due to my "dear Child, in Crown Pieces Ten Guineas, & in Cash & Bank "Notes . . . . for her to keep to herself, well knowing, she will "be kept out of every thing, by those, who have deceived her, & "got such large Sums from me, & have weaned her Affection "from me, on pretence of taking care of her, after I am gone; "Yes, the Villain will take care of her Money, She will find

"she must be a Slave to him; & his insolent daur, & the dirty Slut "his keep". Witnesses have been examd to prove who are meant by him, this insolent Daur; Eliz: Bean says, that by him, is meant Francis Eyre Esq: & by Insolent Daughter Miss Eyre, his Daur; therefore & by reason she Decd often spoke, in her hearing, agt Mr & Miss Eyre, she must have been imposed upon, when she gave her two Legacies; This Paper is dated Septr 20. 1762. Mr Carlony answers to the Identity, & says, yet the two Legacies are a Contradiction to the frequent Expressions of Animosity agt them; & beleives Decd knew not what she did, when she bequeath those 2 Legacies. They have also in their 5th Article pleaded, another Circumstance wch adds us, viz. that Decd said, she wd have nothing more to do with Mr Jones, for that Jos Jones (who was father in Law to Eyre) had suffered to ond to the Amount of 3875 to be imposed on her wch were only to be paid by Instalments. Cornforth proves her Declaration, That Jones had thus used her ill, therefore she never wd employ him — notwithstanding the Evidence of her very great Affection for her daur, in spite of all the endeavours to alienate it from her, & notwithstanding her express dislike to these Persons she left her "Dear Child" only 4000. & 1500 to them; how can this be reconciled? I hope therefore, you will think the Decd executed this Will, rather mechanically, not knowing, what she did.

Here the Evidence was read...

Dr Clerke. 2d Sep. April 24. This Will is opposed on the footing of Incapacity & Imposition, wch if they cd establish, no doubt it wd be no Will; but if this Charge of Imposition is not supported, by sufficient proper proof, the Consequence will be, that it was a good Will. These 2 Ds of Incapacity & Imposition, must resolve into one, of Imposition; for if she was incapable of such an Act, she clearly must have been imposed on; the Imposition carries with it, the Idea of Incapacity. They set out too, at first in another method to oppose this latter Will; viz. on a pretence of a Republication of a former Will; the Merits were to have been rested on this. We might submit it to the Ct, wh they are not hereby precluded, from useing the Plea of Imposition; if they insist on the Republication, it excludes, the Point of Incapacity; it is absurd to say a Person is capable of reviving an old Will, by republishing, or knowing & remembering the Contents of it, who was not capable of making a Will; on whichever point, the Gentlemen rest their Cause we are at Liberty to insist, on the other, being quite thrown out; why then introduce, these various, contradictory, self destroying Pleas? it shews only a desperate Cause: they rely little, too, even upon these Points; they introduce another, viz: wh Decd had a power to make such a Will? so you will find a Trust is pretended; The Qn: wh she had such a Power, I must say, is not cognizeable here: Trusts are Creatures of the Ct of Chancery: tho, if cognizeable in this Ct, it wd, at present, come improperly before you: the very Suggestion, that She was only a Trustee for her daur, implying what they contest, viz. that she had a Capacity; you cd not go upon the Construction till you had found it to be a Will. By the Evidence, Part of this pretended Trust, appears to be complied with, & as to the Part not complied with, they must resort elsewhere: part of the Will is conformable, wh the other part is, must depend on the Construction; whereas by pronouncing agt the Validity of the Will, it wd be saying no part ought to be construed at all. She had, or had not, a power to make a Will, on this, you are to pronounce, for, or, agt it; if she had no power, they had no right to propound theirs: the Will is to be impeached by Evidence, of Mr P. had: left the Decd only, Trustee for her daur, & that Decd has not followd the conditions enjoined: supposeing, this, true, what remedy can Mrs S. have, by opposing this Will; the same Objection flies agt their Will; It is equally a reason, for rejecting one, as the other: if then you