drawing this Will & Codicil, or that she ever saw or read it over before it was engrossed; I hope therefore you will, on the same grounds pronounce agt this Will; the reason is equally strong in the present Case – The sudden Execution by a Person of Mr Colvills Capacity, the procuring an Attorney who was a Stranger to him, to be the Agent in preparing & getting it executed, & that in a private & clandestine manner by Mr Draper, without suffering the Attorney to receive Instructions from Colville himself, or to converse with him; the Care taken that he shd not discover Colvilles Incapacity or real Intention, shew the whole Transaction to be a crafty & fraudulent Contrivance of Lander & her Associates to accomplish their Scheme & induce their Lps to pronounce agt ye Validity of a Will so obtained; the exact Conformity will I hope, induce a Sentence agt the Will now in dispute, wch was rather a more clandestine Transaction, the Person to be benefitted having himself carried the Instructions –

Dr Hay Judge... Both Parties agree the Deed had a right to make a Will, by propounding each of them, one; consequently Mrs Gough died testate – The Will of the latter date propounded by ye Exors, appears duly executed; the Qu: then, is, wh.r she was capable at that time, & meant it shd ensue after her Death? Mr P. certainly had, from all the Evidence, a great affection for Mrs Strode, one of the Parties in this Cause, Mrs Gough the Testatrix had also a great affection for her daur, notwithstanding she had received some Usage from her, wch a warmish Temper might occasion; & tho, ye Ws prove an improper behavior to her Mother, it had not that effect as to alienate her affection from Mrs Strode – what Mr Ps reasons might be, for leaving a Trust in such a manner, I cant pretend to say; he had acquired a large fortune with a very fair Character in his Profession; many Persons thinking to do a thing secretly & out of ye ordinary way, are too wise in their own affairs: there is a reason for leaving it in Trust, because Mrs S. was a Feme covert, but no discernible one, why it shd be a Secret, whatever were his reasons, upon ye face of ye Will he made his Sister in Law universal Legatee; ye Letter is very obscure, but it is plain enough he therein imposes something on her, tho, it does not appear what; it was a Confidential Trust only, that it might not go to Mr Strode her Husband, to whom she is now reconciled – Sometime after Mr Paris's death, Mrs Gough goes to an eminent Council, to know what power, she had, he was of opinion, she was a Trustee for her daur but does not say in what manner, or what sort of Trust: she makes a Will in 1760, pursuant to this Opinion, approves & executes it, wch continues till 1762 – Now for a moment I wd suppose, she has violated the Trust; that in this Ct. wd not set aside a fair Will; the Ct of Chancery will set aside any Act inconsistent with the Trust, on proof of such Trust; if I was to say that Mrs G. was tied up from making such a disposition, by the Trust, this wd depend upon the Construction, & it must be pronounced to be a Will before the Construction cd be entred upon; the Will then

must stand if it is a fair one, tho, the Contents of it as such, cannot, nor ought to be carried into Execution – Factum vel non Factum, is the single Question before me, so that it is reduced to a point of Evidence; let us see then, how that stands – Mr Prestage had sev.l Transactions with the Deed; the first Act noticed, is the Preparation; the avowed motive for making this Will, her daurs ill usage; she asks him to be a W.s he consents; she appoints a time; wch not suiting him, another Day was fixed; here is the Animus testandi declared to the Ws: a Person quite disinterested, & who is clear from any Imputation whatever; & at the Execution both Prestage & Pearson swear, to the full & true Execution; it appears clear enough from them both, that ye Will & Codicil were not read over in their presence, & at that instant of time, but the Defect is supplied by Mr Sparke, who swears they were read over, & that if in the reading he happened to make any mistake, she corrected him; this is very strong Evidence not only as to ye Execution, but as to ye Sanity & Attention, nay the Capacity of the Deed; There is a Recognition deposed to by Mr Sparke, that in ye last week of June, or beginning of July, she had said she was quite easy now she had made her Will – The Common Condidit goes only to the Execution & Sanity of the Testator, at the time of it; so a special Plea is given, pleading precedent, & subsequent Facts: the Ws say, that immediately after the Execution, the Deed said, do you think, I am in my Senses? wch shews she knew something of an Insinuation, that she was not, wch accounts for the Expression disposed to on the 2d Examn, i.e. they say I am mad – It is plain, she had a knowledge of the Will, & there is as clear Evidence as possible, of the Execution, it is true indeed, there are some Objections, but they are little ones – There is a defect as to proof, that the Instructions came from the Deed originally, & I own, I wonder that Mr Sparke, a Gentleman of Credit & Reputation in his profession, shd receive Instructions so many times from Mr Wood, for a third Persons Will, & not desire to see the Testatrix, & the rather, as she was a Stranger to him, as to her Situation & Affairs – Instructions are not necessary, in the Case of an executed Will, for where there is a clear certain Execution Instructions are implied; there are some odd Things, but as to Custody, there is no colour for the Charge; I must acquit the Gent.n of any thing of that kind; Wood, very fairly, as an Acquaintance, hearing the Deed express a Desire, to try the Country Air for her health, offered his house; the Daur went with her; What! did he inveigle the Daur too? & this Daur leaves her, at her own motion contrary to Mrs Goughs desire, who was averse to her return to Surry Street – the Mother was uneasy at her Connexion with Eyre, I am not to enquire why she was so; the Paper brought in to shew an aversion to Mr Eyre, shews also an Aversion to his daur; it cuts both ways; she was however uneasy at her daurs Connexion with him; She expostulated with her upon it; wch produced a Quarrel when, very likely, Mrs Strode, being warm, might let fall those unguarded Expressions spoken of by the Ws It is material to shew the Quarrell between the Daur & Mother, just about the time of making the Will – the Motives are a good Ineption – Mr Winchester was an Exor & Trustee in the first Will, he is so in the 2d, Mr Eyre was one in ye former Will, but without entring into the truth of what the Ws say, as to his swearing at, abusing, & threatening the Deed with a Mad House, wch, at least in part, are scarce credible of any Gent.n his being so considerably indebted to the Estate, might be a sufficient reason for her to substitute other Trustees – She seems even to have had a capacity rather above the common run; the Story of ye Penknife, the note enclosed, & even those Reflections on Eyre & his daur, as well as her Objections to Mr Innes, are clear Proofs of it & from what Lane