declares upon Interrt past, when the Paper was shewn her, by her daur in company with Gray - what cd that Paper be? probably it was the Will of 64: she was asked wh? that was her hand writing? she acknowledges it to be so, but says no more, wth shews both Capacity & Memory. There is no Recognition of the former Will else there cd have been an addition, to what she said, of its being her hand; she seems from this, quite sensible, & from what Strode & Kneller dowon at her Bed side, & exprest a Concern for hair offended her; Mrs G. said, I forgive you &c, & cons: these is not any single Act of Incapacity brought; if then the Factum of Execution of the Will, is proved, on the Evidence of the subscribeing Wts there is proof of the general Capacity of the Decd, how set the Will aside, even tho, they had proved a Custody at Corn forths, yet that being subsequent to the making & Execution cd not possibly affect the validity of it; but I must say in justification of C. that as to the Custody at his house, there is nothing to prove the charge, Haslom dont swear to a positive refusal of admitting Mrs L. or to the Suppression of Letters; she dont swear to Cs insinuating that Mrs L. wd confine her, but that somebody at Cs house said so - the fact noticed by Dr Wynne, of Lane & Davis being sent for to attend the Decd in her last Illness, repel the charge of any improper concealment; Lane was the family Apothecary, C certainly wd tell Mrs L. how he found the old Lady. There is a little something at Cs wch looked like custody till explained; i.e. Mrs L. seems to have been high Spirited, so was at first properly refused, however she was soon admitted, & then left alone with her mother who then shews a sign of sanity, desiring her daur to send her some Wine, & specifies where. She is to find it; here is memory. The old Lady did not like to part with money, for that reason she cd not be induced to lend Wood 200£, Shd was Eyres borrowing her money & teizeing her for more, wch in all probability first caused her dislike to him; I dont know wh? it is natural, but it is the common foible of old People to love to keep their money. It was well urged by the Council, & it strikes me as a great Objection on the side of the Will, (if not counterbalanced by positive proof of the Execution, Sanity) that she has given Legacies to Miss Eyre, of whom she had expressed herself so strongly - She has left 2 Sorts of Legacies; viz: positive, absolute, small Legacies to several Persons & her whole Estate to her daur for life, & after her death to her Children; & then she leaves eventual, large Legacies, very liberally to several Persons: the old Lady thought, after making provision for Mrs L. & Issue, she had a right to dispose of the fortune herself as to the Objection of not having provided for her great Grand Children, in case her Grandchildren shd die under 21, I have, for my own part no doubt, but that the Provision in the Will, wd in order that disposition extend to the Gr: Ch? of Mrs L. & that by an equitable Construction, the 2d Generation, wd by a Act of Equity, be called in to take before Mr Wood; this is my Opinion, & if this wd be so, it will remove the Objection; for say they, she cd not be in her Senses & yet exclude her Gr. Gr. Ch? but this I take not to be Law & Mr Spanke on Interrs, says, he does not imagine, the Deed intended to exclude her Gr. Gr. Ch? from the Inheritance. In the Civil Law, the word Children included Grand Children, & to argue Dig. 23. L. 1A. §4. . . . from Equity, the Succession wd be extended to them in such a Case as this: I think it may be collected, by reasoning from analogy on the Law of England respecting Collaterals: By the Statute there is to be no representation after Brothers & Sisters Children: suppose then a man dies leaving great Nephews, it was the Opinion of Sir Dudley Ryder & the present C. J. Mansfield that Great Nephews wd be considered as Nephews to the deed Bro? these are respectable Opinions & are applicable to the present Case. Piety & Fraud, it is said, often go together, they do sometimes, but she might, × × × × × as dying for old People are often charitably disposed, without any fraud being covered - She might have

move act, than is supposed, her motive for leaving Miss Eyre a Legacy does not appear, but because I cant account for a particular Legacy, does not appear, but because I cant account for a particular Legacy, does not appear to set aside the Will - as to the Note, very probably in order to keep her daur, she chose to amuse her in that manner; how did she wrong her? she only disposes of the money herself, instead of leaving it at her daurs disposal, in case of dyeing without Issue - With respect to Mr Woods Declaration, they possibly he might think it shd be a Secret; he might have received the Decds directions, to keep it one; nor do I see, there is any Stress to be laid on it - the Affid: of Scripts, was at most an Inaccuracy, they cd not mean to suppress the former Will - Upon the whole, this Will of June 1762, appearing duly executed, & there being full Proof of her general Capacity, & it was not a mechanical, but a rational Execution; the Operation of it, is a future, & another Consideration for another Ct: besides, if she had no right to give away the Fortune, in the manner she has done, she certainly had a Power of altering her Exors & Trustees, & why Mr Paris himself did not make Trustees, I cant conceive, but there is sufficient Evidence for me, to pronounce for, & establish the Will, however there being some Circumstances, whereon to found a Suit Litigation, I give no Costs. Appealed, afterwards the Appeal was deserted by Strode for want of Money - The Chief Chancery declard. Paris's Decree to Mr Gough. was right for Mrs Shee &c.

Prerogative 2 Sess. Trin T. — June. 6.

No 69 — Clouds . . . . v. . . Davis & Robinson

Bishop — Fountain — Altham

Admission of a Allow.

Dr Marriott & Wynne. — Dr Harris & Burrell — Dr Calvert & Bever.

Dr Calvert . . . I am Council for Jos? Butler, Grandfather & Truste to the Resid? Legatees in a Will of Hannah Clouds; the decd, dated 10th? 1764. Decd was Wife of Jn Clouds, who agreed to a Separation from her, & by Indre quadripartite Dated Aug? 13. 1764. betw: Jn Clouds on 1 & one part, Hannah C. his Wife on 2 & 2d. Jos? Butler on the 3d. Lewis Davis & Jn Robinson on 4th. of the 3 of the moiety of the personal Estate of her Bro? Wm Butler decd, amounting to about 1000 £ was secured by I.C. to 3d K.C. for her sole & separate use, benefit, & her own disposal, as she without her said Husband, shd by any Deed or Writing, under her Hand & Seal, attested by 3 Wt, or by her last Will duly executed, appoint; Pursuant thereto She made her Will Oct? 3: 1764. wherein she appointed Lewis Davis & Jn Robinson her Exors; These Persons pretend she made a Will of a latter date. viz. Nov? 3: 1764. appointing them Exors, & Resid? Leg: this latter Will is contested by the Husband of Decd, & we intervene for our Interest, under the former Will, wch we say is destroyed, & therefore bring in & propound a Draft, & oppose both the latter Will & an Intestacy, for wch purpose we are now before you, with this Allon. In the 3 first Articles, we plead the Indre, Identity, & Subscription of the Parties . . in the 4 & 5th, that in consequence of this Power, M. C. gave Instructions for this very draft now pleaded by Jos? Butler, dated Oct? 3? 1764. that it was read over to her, & being compared with the Copy, was engrossed, & then read over to, & executed by her; as also that D & R. are the Exors therein named. 6th: plead Identity - 7th contains an account of D & R. applying to Slack, who was appointed to keep Accounts of Wm Butlers (the Intestate) Estate; that he informed them M. C's share of such undistributed Estate wd amount to 2000 £ - 8th pleads that after they were acquainted, with the amount of M. C's undistributed Share, they encouraged her in drinking Spirituous Liquors to excess; that she was for 6 days before, & on Nov? 3. 1764 (the Day of the Date of the latter Will) incapable of recollecting the true State of her Affairs, or of understanding any Instrument, that might be read to her, for 6 days before & after & 2d or 3d of Nov? 1764 not of sound mind, or capable of doing any rational Act - 9th Art: We plead she was intoxicated with Strong Liquors, or stupefied with the Effects thereof on 2d of Nov? 1764. that they told Eliz: Thompson & Mrs Keen, they hoped Decds Husb? wd not be there before they had done their Business in 10th Art: the Progress of the Affair is pleaded - 12 Art: That D & R. burnt the former Will without the Direction of the Decd. 13 Art: That during