Prerogative
Bye Day June 25

Dr Clarke...

Atham — No 80 — Lovegrove v Lycett — Jenner

Dr Clarke & Calvert — Dr Harris & Wynne

The Presumption is in favor of the latter Will; if the Ct was to admit Circumstances in favor of the former agt the latter, wd destroy Will-makeing: In this case much useless Proof has been offered to prove the Will of August: Circumstantially, instead of attacking our Will, they have gone into long Pleas; their Business was to have shewn Want of Capacity in the Testator & Custody at yt time he made the last Will, whatever is pleaded, which dont refer directly or indirectly to either of these Points, is nugatory; if such a Custody can be shewn, as might influence yt Testator, or procure yt Will in Qu: it will create a Presumption agt the subsequent Act, but Positive Proof destroys the ab: Presumption - The motives whereon a Man proceeds can scarce ever be proved, the Act may: circumstances, Letters, Invitations, Civilitys &c, may be shewn - No Favor granted by Decd to Mr Lycett on the 26 Aug: will prove Decd continuance in the same mind to Sept: 13th. If there was proof that the Custody prevented Decd making a subsequent Will, that wd have weight - 2 of the Subscribing Wts to yt Will of Sept: are old Acquaintance, the other, (the drawer of the Will) is a Stranger a Witness is provided a long time before the Execution, wch dont look like Imposition, the sooner fraudulent Transactions are finished the better, Expedition & Secrecy is always attended to, if the Trad had been concerled nothing wd have been suffered to transpire - Lovegrove said they must send to the Lawyer, Taylor was abroad &c. here the Proceedings were recited.
Rose's saying he wd have nothing to do with the Affair, cant be construed into a Suspicion on his Part, as he was afterwards a Witness, tho, nothing happened in the Interim to remove such Suspicion, if he ever had any; but Goodchild proposeing it to him, he might mistake him; it is plainly proof that if there was any fraud Lovegrove cd not be privy to it - the Decd said, let me try the Tackle first: Payne says, on asking Decd how he did, (having no Answer, he thought him Insane, so put another Question to him, i.e. how he spelt his name? he told him deliberately - Payne was not directly called up, 2 or 3 Hours intervened, a Person bent wd have been obliged to finish it in much less Time - all the Person who are considered in the first Will, are considered in this: there is not such a Variation between them, as to induce a Conclusion that they were not the Act of the same Person: the main Object seems to Goodchild, who had the House by the Will of August, the furniture wd have gone to Lycett, with whom & G. you are told of a Dispute about the furniture - a meer Stranger drew yt Will, how cd he know yt particulars but from the Testator from whom he was obliged to pick it out by Pieces, the Devising yt Copyhold Estate, by Will, was meer forgetfullness in yt Testator no Argument can be drawn from thence; there is no Impropriety in his saying "I lent Money, tho, I borrowed it of my Father!" The Drawer had in a Ordinary authenticated the Draft - Having established the Will, we are not bound to account for the reason of the Testator's altering his Mind, tho that may be done: Decd says he fear Lycett wd cheat those poor Creatures & refers to the Circumstances of the Furniture &c. The Decd's Declarations wd almost amount to a Revocation of his former Will: the very Circumstances alledged in proof of Decd's friendship for Lycett subsequent to the last Will, prove his Sanity - no Custody is pretended till a Month after when Hood & Lycett arrive.

Dr Calvert...

a more settled & Continued Opposition than this, was never given, with less Foundation; we wd have heard it on the Testamentary Witnesses: Lo: was not about the Decd, persuadeing him to make a Will for him, but Decd sent to him, in his Shop, that if he wd come over, & make a Will for him, it std be worth his While; he was disappointed of a Person, who promised to attest it, wch accounts for the Witnesses who signed, being there - Paynes Character is unimpeached, he acted with proper Caution & asked Questions with becoming Delicacy - Goodchild did not interpose, so as shewd she dictated, the Decd applied to her to refresh his Memory as to what he had said he wd leave, she did so, but never said, "Please to leave such a Sum to such a One" - There being only one Wt to the Instructions is no Objection, one Wt is sufficient to Collateral Circumstances: the whole Progress & Execution is very clear, they must remove these 3 Wts before they will attend to other Circumstances - They have not examined to shew that no such Transaction was had; the Time the Drawer spent

in making the Draft is not important; it is hinted he was a Young Man, & thence they wd insinuate, he must be longer about it; there cd be no Scheme in employing him, because Lo. meant to have Taylor, who was not at Home, when he was sent for, & this Young Man therefore came in his Stead; The Residue they say amounts to Good what Argument will they draw from thence; It appears the Decd had no Relations about him, he did not know wh: his Uncle was living - Payne was called in to bring the Instructions, his Affidavit, wch is very full, has been read in Evidence Payne says, This yt Draft of the Instructions, taken from the Decds mouth before he made the Will; the Decd was ill, Powell & the Drs prove nothing of what is alledged; the Apothecary was intrusted with his Health, he was therefore very proper to give Directions; We have accounted for the Decd's change of Sentiments with respect to Lycett; wh: the Dislike proceeded from good reasons or bad, is immaterial; the Wt are not contradicted, nor their Characters impeached who speak to previous & subsequent Declarations, it is much in our favor that our Opponents have pleaded so much & proved so little.

Dr Harris..

The Gentlemen have mistrusted their own Cause, & after saying they wd not plead, they have pleaded; there are frequent Declarations of the Decd in favor of Ly: why did he make him Exor? why did he say he was under the highest Obligations to Ly: & that he had been a Father to him; Lycett & Hood were employd by Biddlesons Father; Decd wd not have known where his Securities were, if they had not informed him - The Person entitled, is he who has taken care of the fortune, from him Decd received the most Benefit - This remarkable Ly: was with Decd Sept: 10th & left him on yt 13th, after wch time, it is in proof yt Decd received him, & wanted him not to act as a Visitor, but as Master of the House wch is a Sign of his designing him for his Heir; Decds Letters of Business to Ly: who transacted large Sums for him, contain many Expressions of Affection & Regard: Notwithstanding this permanent Respect &c. Lo. has the Effrontery to produce a Will dated Sept: 13th. What Lo. said in the Summer shews a Design on the Decd, who plainly intended him nothing - It seems Decd was fond of writing his Name, it is probable the Parties interested put Scraps of Paper before him at first, & after repeated Essays, at a proper time the Will; If Lo had an Opportunity of comparing the Instructions with the Draft, we might possibly discover this Transaction; It is remarkable Payne says he had yt Instructions at Maidenhead, & afterwards, that he used always to burn them when he had got a Draft - The Date of Sept: 29th is erazed in the Draft. If the Ct has any doubt about yt 2d Will, you will not suffer it to revoke the other; the Appearance of Custody is very Strong, when Goodchild goes out, he carries the Key with him, every body is shut out: The Witnesses who speak to the Declarations, dont specify the Time, the Competency of the Witness (who is Partner with the Exor of the 2d Will) is not destroyd thereby, but his Credibility - Dr Battie deposes not to a sudden, but to a constant & permanent Weakness; a general good Character dont prove a Man will not do one bad thing; Every behave well on some Occasions: Goodchild is more Benefitted by the latter, than the former Will, his Relations are Witnesses

Dr Wynne

It is certain, the Proof the Ct requires, of the fact & Execution, is different according to the Circumstances of the Case, where a Will is made, in consequence of Resolutions taken long before, in favor of Relations, the Ct accepts of a less Degree of Proof; but where it is done a little while before a Testator's death contrary to a former Intention, Stronger Evidence is necessary - I shall begin with the Connection between the Decd & Lycett first, & afterwards speak to yt Execution wch is doubtfull & liable to be attacked by Circumstances - The Decd was incapable; the only sensible thing he did, was, chuseing a Sensible Man to do his Business; Every thing was referred to Lycett; It is in proof from the Servant, that a general Reputation was established of Decds Reliance on Lycett, he speaks to the first Will, & all the Incidents, & states the Legacies; it was a Friendship of many years carried into Execution, as it were sealed; If Lo. dont rely on the Condidil, he std plead some Instances of Regard expressd by Decd for him, to establish their Case, you must presume, Decd had taken some Offence at Ly: & transferred his Affection from him to Lo: If the Decd had Goodchilds benefit in view, it was odd he std have made the 2d Will, in such a manner that Ly: is therein more benefitted than G. In his Letters, Decd expresses great Joy at Ly: Recovery from a fit of Illness; yet cuts out his old Friend without Cause; is this likely? consider the Character of Decd, & see if there was any probability of his being a Dissembler? he was a Rough, Swearing Tar, who always spoke his Mind; but suppose he meant to dismiss Ly: why std he pitch on Lo: as the Successor to Ly: I dont say how he was imposed on, it is sufficient if he had not Capacity adequate to the Solemnity of the Act - an incredible