Story is told about sending to Lo: to be Exor, which is like going into the High
ways & Hedges &c to see. Who wd accept the Worship; the Deed expressing a regret
he had so long delayd to alter his Will, stands established; the Manner of his
giving Instructions is singular; they are not positively proved, a Consequential
Proof is not sufficient; the Directions must have taken up some time; Deed Ed
not recollect Particular, therefore was obliged to obtain Information from other
Persons; I wd ask did the Deed name Lo: Exor & Resid: leg: because one Wn is suffi-
cient to prove Instructions, that Wn shd speak full to that Point, the Instructions
might have been taken at a different time from that, they are said to have
been, & indeed the Erasure shews they were — the Custody is very plain — the
Interested Witnesses paid by Lo. dont fix the Time of the Declarations. Talwaper
says Deed on 14th of Octr asked what Right Ly: had to make a Disturbance
there, other Wn speak to the same time nearly, but Dr Battie says the Deed was
incapable on the 17th of Octr You will compare the Evidence of the Wn who con-
=tradict each other as to his rational Conversation of the Deed

Dr Clarke.... The Erasure wont destroy the fact wch is uniformly deposed to by the Witnesses
If that is established, we are not bound to account for it, stat pro ratione
Voluntas — They object to the Message carried by Goodchild to Lo. & conclude it
was sent by the Master: as Goodchild Wd have been too great an Idiot to
be entrusted ... Would the Age of Payne incapacitate him? tho only 17
he was able to take Instructions for a Will — In the Case of a Will attested by
3 Witnesses, proof of Instructions is not necessary, you declared so in
Winchester & Gough; if the Deed named the Exor & Resid: leg: likewise; the was entangled in his Acquaintance, & found
it necessary to preserve a fair Appearance; It was ingenuous in Lo. to tell Dr
Battie the Deed had provided for him: his saying jokeingly to Deed, "you
will make me your Heir" dont shew any Intention to impose a Will on Deed:
We have proved a strong Recognition — Talwaper's Depon makes agt
the Will of August & his Ly at having altered it.

Judge Dr Kay I think myself justified in giving Sentence for the latter Will, & will state
my Reasons on the Evidence, as there are Difficulties & Improbabilities with
respect to the small space of Time between the first & 2d Will. The first was
duly executed; it is necessary therefore for Lo: to shew by clear Evidence, that
Deed made the latter Will, by wch Ly: is set aside, & has no Benefit. Both
in point of Execution, stand upon the same Grounds, as duly executed;
the next Qn then is, wh they are both fully proved; the Proof of a Will differs
according to Circumstances, in favorable Cases, less Proof is requisite; as
where next of kin are benefited; so e con: where Strangers are benefited or
a former Will is to be revoked, a higher & more clear Proof is expected:
Payne's Account is very clear & distinct; he is young, but adroit in
his Business; It was not the Design to have employd him if his Master
Cd have attended. If Basing Wodehouse had been a Wn to the 2d as well as
the first Will, this Case Wd have been greatly cleard. Payne says not
knowing (he does not say, doubting) wh Deed had his Senses, he asked him
how he spelt his Name, & the Deed deliberately. i.e. slowly answerd him
he swears positively, Deed did give him Directions by word of Mouth, &
that whilst he was giving the Instructions, Deed addressed himself to
God, & bad him set down the Legacy to Judy ... that he immediately
copied the Will from the Draft & carried to the Deed, who was then alone;
B. Wodehouse was not thought a good Wn because his Son was a Legatee
& he was to receive the Legacy for his Son; this is a reason for calling
in Rose; Payne says, he asked Deed, wh he approved those Gentlemen
for Witnesses, to be sure, said he: the Wn dont agree in every particular
but speak to the fact. No Exception is taken to the Handwriting of Biddleston,
Rose & Payne confirm each other as to the Message from Biddleson to Lo: to
come & help him alter his Will, that he wd make it worth his While;
Rose said Lo: consented; a Message of this nature dont imply that if Lo: had
not gone, it was to have been carried to another; Goodchild said he must go
to Taylor & take him with him, but he being abroad Jas Payne went in
his Stead. Payne when he came asked the Deed how he did, who shook
hands with him, & replyd he was better: as to the execution, 2 of the
Instrumentary Witnesses agree Payne knew Deed by Sight, so Identity is
proved. If it appeared there was not time for the Transaction, I cd not be-
=lieve the Account given by the Witnesses; the Time is certainly very short
I have canvased the Time from Paynes Evidence; the Instructions were
written down first, the Draft next & then the Will, it is possible, it cd be
done, It is to be credited, unless I cd find out that his Depon compassed
with itself, or that of others, cd not be true: Wodehouse saying he Wd have
nothing to do with it does not intimate what is wanted, it cant fairly

be presumed from thence, that he considered the Transaction as unfair
the Instructions are not brought in, I wish they were, I dont speak positively
to their Being at Maidenhead — The Draft is brought in, it is not objected to as
differing from the Will, but say they, there is an Erasure in the Deed date, that
is more common than for a Person to mistake; It is under the abbreviated Word
exted wch is rubbed out with the Thumb. Would he have brought this Paper
in, if it had been unfairly transacted; If it was supposed to have been executed
on the 29th, why alter it to the 13th. I see no reason to say the subscribing Wn
shd not be credited. But there are Circumstances wch throw a Doubt on the
whole Transaction; the Will shews Deed had a firm Intention to benefit Ly:
26th of August & not Lo. who was a Wn to the first Will, the Presumption is strong
agt his changeing his Affection in so short a Time; tho. indeed the Motive
of this Change is not necessary to be proved, if the 2d Will is proved; If the Act
is proved to be done, the Motive is included therein, in many Cases it is impossi-
=ble to prove the Motive; Suppose Goodchild moved Deed to substitute Lo. rice
Ly: She is the principal Object, Deed in 1st Will says. I give Mary Goodchild 1000£ for
her Attention to my Father, Mother, & myself" I dont think Lo. but Ly. the Mover
of the 2d Will; there appears to have been a quarrell between Ly & Ly. I may suppose
it was about the Household Goods, as they are given her in the 2d, & not in the
1st Will, if so Ly: lost by quarrelling for a Trifle, if this is true, Mrs Ly did wrong
but that will not defeat the Act; an Improper Act, if done by the Deed is not void
on account of Impropriety; Lo: Observation to Dr Battie, that he expected, or had
reason to think he shd be more benefitted, must refer to an Act done: as to what
the Wn say of the Deeds Declarations, they are too strong considering his behavior
Deeds Letter of Sepr 24th, is very friendly, therefore I can lay no stress on his Decla-
=rations, he must be a very great Dissembler. I dont think Evidence is wanting
to establish the Will of Sepr 30 I have considered the Circumstances wch induce a
strong Improbability; the Stress lays, on his knowing he had no power to
bequeath the Copyhold; the Answer is, what has already been given; it was
Inattention, Inadvertency, not Incapacity. Dyet refers to acts of Capacity that
very Day, the Order to the Servant to carry him to the Post House; the
Invitation to the Races was subsequent; Capacity is admitted by Ly: on Sepr
13th. if there is a clear Proof of Capacity the other Difficultys will be super
=seded, there are very strong Suspicions, but not legal Presumptions of
Fraud, wch must be as strong, as Proof itself, to destroy an Act deposed to,
By what Dr Batty depones, the Custody is certainly proved after making
the Will, but considering Deeds Condition, it was not a fact that admitted
of this being open to all the World, tho, Lo: Behavior was indiscreet. If I was
to say the Probabilities are strong enough to induce me to pronounce agt
the Will, I must say 3 unexceptionable Witnesses are perjured, however
Blameable the Conduct of Goodchild or Lovegrove may be, I must
pronounce for the latter Will of Sepr 13th, but considering the suspicious
Circumstances attend: this Transaction, there is not the least Pretence for
giving Costs.

Appeald to the Delegates, who.

Prerogative

Bye Day. June 25 — No 8!

Jenner — Noble v Snook — Bogg

Dr Wynne — Drs Collyer & Calvert

Dr Wynne.... Nich: Moore of Dillingham in Dorsetshire died 6 March 1768, having made his
Will 5 March 68, & therein appointed Sam: Noble sole Exor. Bogg for Eliz: Snook, as
Sister & next of kin opposed the Will, Jenner propounded it.

Jenners Allon. 1st Art: pleads great Friendship between the Deed & Noble many years,
before & to his Death, that Deed used to say he wd leave him what effects he shd
die possessed of — 2d Art. That Deed being seized with Illness sent to Geo. Parrott
an Attorney to make his Will, but he being abroad, his Clerk Harry Jennings
went to Deed March 5. 1768, at his Lodgings, when he came there Deed told him
he had sent for Mr Parrot to make his Will, & gave Jennings Instructions by
word of mouth, wch he wrote down from Deeds Dictation in the Presence of
Benj: Brewood, In Burford, & Eliz: Noble Widow — Art. 3. pleads y afd Instructions
as an Exhibit — Art. 4. That Jennings prepared a Will from the afd Instructions,
went again to Deed, & began to read the same to him, but he interrupted him
therewith. I. read, as well the Bequest therein, as the direction about Deed's funeral
& the nomination of the Exor; Deed well understood the meaning thereof, & in token
of his Approbation raised his Hand to subscribe, but finding himself unable
from weakness, desired Jennings to write his name, & after he had so done, Deed
published & declared the same as his last Will, in presence of sev: credible Wn
who attested the same — Art. 5. 2 Hours after Deed had made his Will, Morgan Sanger
an Acquaintance of Deed came to visit him, & said he had just been informed, he had made
his Will — Art. 6 — Deed after execut: this Will grew worse till he died ab: 5 the next morning.