N.B. See 193 Prerog.t Ct. dec.d 3. 1753. Bef. Glee

Davies / Evans

The Davies of Barkway in Hertfordshire, had no neither father, Brother, Brother or Sister, but 2 Nephews, & 1 Niece. 7 Dec.r 1749. made a Will, after a draft in his own hand, (exhibited in the cause) in wch after leaving Legacies of 30£ each to his Nephews & Niece, & some other Legacies, He made his 2 Nephews Exors, & Res: Leg: there were many instances of affection to his Nephews, & of his intention to make them his Heirs, mentioned by sev.l Wit.s before & after making his Will, but none to his Niece: Econ: some wit.s deposed, they had heard him speak slightly of her; she was married to Evans, Page to the Prince of Wales, who died insolvent a Month after Davis had made his Will; Mr. & Mrs. Smith with whom she lodged, told Deed her unfortunate circumstances, (had: called on him for that Purpose at Barkway in their way to Cambridge) he was affected therewith, said his Nephews had deceived him, & told him her Husband had left 500 Pound but that he w.d alter his Will & do something for her; he Deed the Smiths to call on him at B. on their return from Cambridge, wch they did, he gave them a letter for her, in wch he said he w.d do something for her, he told the Smiths he had cancelled his Will; afterwards he went to Mr. Ambrobus an Attorney at Royston, & said he w.d alter his Will, & desired him to come to B. for that purpose: at the End of Sept.r the Deed fell ill, at the request of Mrs. Stephens, an intimate Acquaintance, desired his Nephew Jack Davis might be sent for; Stephens sent for both his Nephews, when they came he received them with great affection; the same day, Dr. Billing, Dr. Bly & others, asked Deed if he had settled his affairs, he answered, he had not lived so long in the world without thinking thereof, & that his Nephews were his Heirs; & Bly says he looked at a Wooden Box near his Bed when he said this, & seemed to nod assent; the Key Deed had always kept, but on the Nephews coming he delivered all his Keys to them, the next day he died, presently after wch, the Nephews, before all who had been present, when Deed said he had settled his affairs, the Day before, search'd for his Papers; first a Bureau, then a Portmanteau, last the Box; Bly saying nothing of Deed had: nodded a bit, in that, they found the Will of 1749 wrapped up in a Paper, the Seal cut off, but wrapped in the middle of it, & Bly says there were 2 or 3 Bank Notes wrapped up with it; Billing says he saw one Paper that looked like a Bank Note, the other 2 Wit.s say, there were no other Papers of Consequence; the Will was thought cancelled & Tho.s Davis took Admon, being called on by Jane Evans to distribute, in Aug.t 1752. Jn. Davis cited Tho.s to bring in the Admon, shew Cause why Probate of the Will shd not be granted to him? Tho.s brought it in & declared he did not oppose the Will, on w.ch Jane Evans intervenes & opposes it; For J. & T. Davis it was said, there was no dispute of the Will being duly made & executed, the 1 Qu: then was, wh.r it was cancelled? of this there was no Evidence, proving Deed had done it; his affection to his Nephews was a Presumption of the contrary, & it appeared by the letter exhibited, they had not deceived him in his Nieces circumstances, his Behavior on his death Bed, shewed, he was not dissatisfied with his Nephews, but intended they shd be his Heirs 2 Q. if he had cancelled his Will wh.r his Behavior on his death Bed amounted to a Republication? his nodding at the Box was an acknowledgement of the Will contained in it, & the giving the Keys to his Nephews, was a strong indication he intended they shd be his Heirs. Sir Geo Lee. Judge said. It is admitted the Will was made & executed by the Deed, how then came it cancelled? if it was so, & there can be no doubt, but it was done by Deed himself, as it had been always in his Custody, no one else have access to it before his Death, but his Nephews, this therefore is an act plainly done, to destroy the Will; By the Evidence it is very probable, it was done, between his seeing the Smiths & their return; his reasons must be his Intentions to make another Will in favor of his Niece; his Declarations to Ambrobus shew, he intended to depart from his former Will, & make a new one, the only Qu: therefore is, are there any Acts sufficient to re-establish the Will? & where there is an express Act, discovering

a Design to depart from a Will, there must be a positive Act also to prove a Design to return to it; the Declarations the Wit.s depose he made before his death, were got from him by Questions, & they are not certainly levelled at the Will; there is nothing but the Nod, mentioned by Bly to fix them to that, wch is told in such a manner, & his suffering them to search every where, before they looked in the Box, is so unlikely if he had observed it at the time, that it looks very like a Circumstance thought of afterwards, when it was agreed the Will shd be maintained; it is inserted to be that none of the Wit.s but Bly shd know of the Notes found with the Will: Great Stress is laid on Deed giving his Keys to his Nephews, but if he died intestate, they were the only Persons present entitled to Distribution, who therefore was so proper to be entrusted with them? on the whole of the Evidence the Judge declared the Deed died intestate, & pronounced for the Intestacy without Costs...

N.B. Extracted this Case of Davis, Evans from Dr. Wynns Note Book.....

Prerogative
July 5.

Altham — Woodward v Sanders — Bishop

Dr.s Harris, Burrell — Dr. Wynne

Dr. Wynne ..... stated the Case & Proceedings, with the several Articles of the Allegation now offered.

Dr. Harris ..... restated the Proceedings, & then said. We pleaded that Anne Ward had declared, the Sanders.s had set the Deeds Sister Quartier agt her; in the 1.st & 2d Art: they plead that ..... Sanders lived with the Deed Quartier, had no Influence; this wh.r true or false, is not contradictory to our Allon, the material thing is, wh.r Mrs. Ward & Deed believed it or not; her belief was to be the motive of her actions. The 4 & 5th Art: is a general Article & is admissible, if particular facts are pleaded afterwards; I do not oppose the 6 & 7th Art: they dont say he will not pay, tho, he can; If you do not admit these, you will reject the general Article

Dr. Burrell .... What they plead shd be strictly pertinent; they state in the Art that he was in debt to & does not pay, & that he threw himself into the Fleet to avoid Payment; how can he pay, if he is insolvent, they shd prove him able & yet unwilling to pay, what they plead in the next Art: strongly indicates a Presumption, that they erred immediately before; viz. that Mrs. ... lent him 50£ to extricate himself from Prison, & that he has not yet paid him; is it probable any Man w.d lend another 50£ if he had not a good Opinion of his Integrity (can his Non payment induce a fair presumption of Dishonesty? Just rather conceive it a strong Indication of his Inability. ....

Dr. Wynne .... In the 2 first Art: of their Allon, they pleaded that the Grand daughter ..... Sanders caused Mrs. Quartiers Annuity to be withdrawn from Mrs. Ward; it is then very material for us, to plead, she had no influence the Plea we proceed on is Imporition; consider her Age, that the Party had neither Power nor Influence, & that Mrs. Quartier was of so unsettled a Temper, that it will take off all Imputation of Influence we plead that by the next Post she wrote, to acquaint her Grandmother of Mrs. 2s death, it is very probable she cant recollect the very day when the letter was received, the Wit.s will speak to it: the 4th. Art: is in answer to them, we plead generally, first, then particular facts, wch the Dr. says is necessary to make a general Article relevant. We plead that Woodward threw himself into the Fleet to avoid Payment of a Debt, & then took the Benefit of the insolvent Act, wch is as knavish as possible to cut a Person out of a Debt; It is a strikeing Instance of Roguery to receive Money for a Person & never account for it; we dont plead he c.d not, we plead he w.d not, but refused, wch looks, as if he.s take advantage of their being no note ...

Dr. Hay Judge .... Every thing is material wch tends to illustrate the Point in Issue; the 2 first Articles are certainly pleadable; the words, soon after, is sufficient, other Articles, I have some doubt. Woodward has pleaded, he has a general good Character, they plead the Contrary: the Objection is not taken to the