The Capacity of Deed as well previous, as at, & subsequent to the Execution of y^e Will, is in full proof – Knapp says abt 10 days before her death she expressd a desire, in her hearing, to make her Will & sent Dep^t to Gregg, (an old Acquaintance of Deed) to know if he thought it right she shd make her Will; Rd Gregg confirms Knapp, says he sent word, it was very proper; Hand tells you the Deed on 11 Feb. signd an Authority to empower him to procure her Lres of Admon to her Sister; & Knapp says she saw Deed signd it – Mary Hales, deposes, that y^e Friday before Deed died, she expressd to dep^t a Desire to make her Will; & that on y^e morning it was executed, she desired Knapp in Dep^ts presence, to send for Wood Ward, for she wanted to see him; on his Arrival, she told him she wanted to have her Will made; She asked, who shd make it, she answd Mr Hand – H Parsons, says a few days before Wards death, she went to her Lodgings for a Plate, (whereon she had carried Veal from W. to Deed) that Deed desired to tell her Maste, she wanted to speak with him immediately; This is also confirmd by Knapp, who adds, that Deed desird her to tell W. if she met him, that she wanted him – The Instructions reading over, & Execution of the Will, are demonstrated beyond Contradiction, by every Person present; even Counte acknowledges, he heard it read &c, & approved by Deed – Her Capacity subseq^t to this Transaction, is spoke to by Packet, Knapp, M^r Hales, Shaw & Smith – The first tells you, that on y^e Saturday Evening preceding her death, (y^e Day y^e Will was made,) Deed told her, she had made her Will, & remembd her in it, left her a Guinea; asked how much she was indebted to her, being told 9 s. paid her; then gave her 1/2 Guinea, desired her to go to Mrs Petticues, & fetch a Gown out of Pawn, wch she had left as a Security for 9 s – Knapp confirms Packet, adds that on y^e Monday after y^e Execution of the Will, Deed declard to dep^t she had made her Will, & settled her Affairs to her mind – M^r Hales depose, that y^e a day or two after y^e Execution of s^d Will, She told Deed, Bradley was angry with her for making her Will, unknown to him; that She reply'd "who wd you have me to leave it to, but those who supported me; my Will is to my mind, & I won't alter it – The Account given by Smith & Shaw of her behaviour on Monday 18 Feb. when she was pray'd by is extremely strong; She informs M^r Smith, who she was, gives him an Account of her Family, tells him his Wife knew her, tho, he did not, & joined devoutly with him in Prayers & made her Responses properly – But say the Gentlemen, it is a little extraord^y that when W. asked who shd make her Will, she shd name Hand, whom she had never seen; extraordinary as this may appear, the wonder will cease, when they recollect, she had given Hand, an Authority to procure her Admon to her Sister, on 11 Feb. (i.e. 5 days) therefore nothing was more natural, than that she shd wish to employ the same Person, in an affair of similar Nature, to that, she had before entrusted to him – D^r M. says, her having employd Hand at all, after the Conversation, that had passd between Bradley & Oliver, savors strongly of Imposition; I answer, by no means; M^r Hales to g^ve Acc^ts for it, by telling you, that Deed soon after her Sisters death came to her Knowledge, applied to Bradley to write to Fred^k abt her Sisters Affairs; & not hearing from him, after waiting as long, as she thought an Answer might be returnd, she applied to W. for his Advice, who recommended Hand – It is noted, that on the first advices, the Deed received of her Sisters death, she seemd indifferent, took no step in consequence of it; but that as soon as it was rumoured about Worcester, that M^rs D. had died worth a considerable Fortune, which must come to M^rs Ward, these People got about her & persuaded her to make a Will; her Indifference, on the former Notice, from Ann Sanders' Live, may be easily accounted for, when you recollect her Niece wrote word, that every thing belong^g to her Aunt, was consumed; if that was true, M^rs Ward had little occasion to

hurry herself in an affair, from which so small Benefit was likely to accrue, that nobody would advance her any thing on so unstable a security; but when the Deed found, on farther Enquiry, there was a prospect of her acquiring a considerable Sum of money, she took the earliest opportunity, of laying a Plan to secure, What she shd be entitled to; & of bequeathing it to those, who had the fairest pretensions to her Favor – D^r M. says M^rs W. propagated false Reports of many Sanders going thro' Worcester, without calling on the Deed, & thereby communicating such Accounts to M^rs Ward, imposed on & induced her to make the Will in Question; the Truth is, Wm Sanders told W. with this, who owns he said so, because he was so informd; I may question this Account of Wm Sanders, but tho' true, W. can't or ought to be concluded to be the Author, or to have been induced to relate it from a dishonorable motive; nothing is more common, than to repeat what we have been told, which tho' may not always, be reconcileable to the Rules of Prudence, ought not to be attributed, to so base a design as is insinuated here – That no Offensive Measure might be wanting, a Plea, has been given to attack the Character of my Client & several Wit^s examined thereon, amongst whom, several, are themselves Bankrupts, or Paupers; 2 or 3 display his Character in a very favorable Light, & the rest, depose indeed to his Poverty, & being deficient in paying his Debts, but own at the same time, their Ignorance of his Abilities & Powers to discharge them – Under these Circumstances, I hope the Ct will think we are justly entitled to a Sentence in favor of this Will –

D^r Harrison. This is a Question, arising on a Will, made in extremis, to the prejudice of an only Daur, without the Deed hav^g a Capacity adequate to the Act; That she had not an Active legal Capacity; I mean in distinction to a passive Capacity, whereby a Person is brought to do an Act; that the Party benefitted was almost a Stranger; that he took Advantage of the Deed's Ignorance, Distress & Drunkenness; that this Will was obtained as a Security for a Debt, there are accumulated Presumptions; & tho' Fraud is not to be presumed without good Grounds, yet where there are such, it is Proof; i.e. moral Certainty – it is more probable that she shd disinherit her only Child without Cause; & tho' she might have a glimmering of reason, She had not such lucid Intervals, as will be sufficient to validate this Transaction; The whole pass between the 16th of Feb^y & y^e 20th. the old woman dies; if it shd appear she was ill on the 11th & insensible on y^e 16th, the Act will be of no Effect – The Declarations of Parties must stand agt themselves – 8 Witnesses depose to her general Drunkenness; on the other Side 3 W^s say they never knew her Drunk; but they were about her during the whole Transaction, & are Legatees under the Will, therefore interested Witnesses: The general Opinion of the Neighbourhood was that the Will was obtaind by fraud; & it is more probable, it shd be fraudulently obtained, than that a whole Neighbourhood shd be deceived; The Vicinity has always met with due respect, in matter of Opinion; Presumptions will lead rather to suspected, & attended to with Caution – The Proof of a former Connection between W. & Deed is detrimental to their Cause; for the Witnesses say they believe, W. W^s have had nothing to do in this Affair, if it had not been for the Fortune – Knapp sold the Deed for about 3£ which she owed her; Shaw says he might have been Executor – Strangers are procured for the purpose: Is it the usual manner of having Wills attested? It don't appear, that the Deed asked one of the Witnesses to attest the Will: The Jury is impossessed of all