by 3 Ws. at the least. No Latitude is left for Interpretation — This is not the Original Paper, reduced into writing, in the life time of the Testator; and Mr West has in this Transcript varied from the Original as much as he thought proper. It cd. not be the Intention of the Legislature, that different words shd be wrote down, from those the Testator uttered; The Testator never cd. say, "And I think Mr Philip Allen Sen.r" It was a doubt that West entertained, whilst he was writing it; This is to revoke a Legacy in a Will duly executed. Stonewell's Case. 31 Car: 2. Raym: 334

The Testator made his Wife Exec.x & Resid.y Legatee; but she dying in his life time, he by a Codicil nuncupative, devised to G. R. all wch by Will, he had given to his Wife, & died." The Qu.n was wh.r this nuncupative Codicil was good notwithstanding, the Statute the Ct adjudged it was, & as it were, a new Will, for so much as he had given to his Wife, & that it did not alter his written Will, for there was no such Will, the Operation of it being determined by the death of the Wife, living the Testator her Husband — The Ct in that Case determined the Codicil to be good, because it was not to revoke a Will, but to dispose of a Residue lapsed by the death of the Wife; So the Converse will hold, that if the Wife had been living, it wd. not have been good — When a Man has given all his personalty away, by Will the Bequest of £3000 must imply an Alteration; So far is it from being committed to writing in the Testators life time that they shew it was wrote down after his death; this very Paper now propounded shd have been reduced into writing during the Dead's Life time; but it was not, therefore cd. not be read over to him; if this Practice was admitted, wch is now contended for, all the Inconveniences wd. be let in, wch the Statute meant to remedy; Are Persons present to judge what was proper for the Testator to say? certainly not; they got together & made a new Will; however well they might intend it with respect to the Widow, the Suppression is illegal. The Paper before the Ct differs materially from that of wch it is called a Transcript; the Latitude intended to be introduced is not consonant to the Statute, therefore you cant receive the Plea —

Dr Bever ..... Taking the Account of the Facts as stated, by the Gentlemen, the Cbd: is such, as cannot in Law have any Effect; when you consider how it is introduced, you will perceive, it is not the identical Paper given by Mr Allen — There can be no Substitution to any Nuncupation; the Statute of Frauds, is a restraining Statute, & must be taken strictly —

Dr Harris ..... The Drs will not deny, the Codicil was read over, to the Deed, & is attested by 3 Ws — The Statute says, unless the Nuncupative Will, or Codicil, or the Substance thereof &c. It says, No Will &c. shall be revoked &c. The Intention of the Legislature was, that there should be certainty; the Substance was read over; we have told, what was in the first, & not in the 2d, the Ct sees wh.r any thing material was omitted; the Statute is complied with; in one Sense it is not a true Copy, viz. the Expression as to Mrs Allen; is that material? There is something in the Copy wch wants to be explained, viz. there is a lien on the real Estate referred to in the Codicil. There is a mixture of Disposition of real & personal Estate; but this is no reason why you shd not confirm the whole Nuncupation; it wd. prove too much: this Ct will not prejudge another Ct. wch must determine on the Construction of this Codicil. It is to determine what operation this Legacy is to have on those in the Will ....

Dr Wynne .... If we have not shewn in this Plea, a full compliance with the Statute, I admit it is not to be received; the Gent.n assert what the Statute dont warrant; that the words must be written on the

identical paper," It only says, it must be taken from the Dictation & from that read over, & written down — It is sufficient, we have pleaded such a Case, as may be brought within the Statute, so induce the Ct to admit the Plea —

Judge ... Dr Hay ... The Question is, wh.r the Allon is proper to be received to proof, & this depends, on the question, wh.r supposing it proved, the Court can pronounce for the Paper as a nuncupative Codicil? if the point of Law is clear, that notwithstanding the facts, the Party can't avail themselves of the prayer, the Ct wd. reject the Plea, but if that is doubtfull, the Plea ought to be admitted, as a possibility of its operating as a nuncupative Will, is sufficient inducement to me to receive the Allon to proof: the Statute of Frauds is binding on the Ct. As to Wills of personal Estate, the Stat: directs several Solemnities, in addition to the Rogatio Testium required by the Civil Law. The Statute relates to 2 kind of Wills; where a former Will is to be affected, & where it is not: I have remark a considerable difference, between the 2 Cases, for in a Substantive nuncupative Will, the Stat: says "unless the same or the Substance of it, be reduced into writing;" but in the revocatory nuncupative Will, I observe the words are not used; but "the same reduced into writing;" It will be matter of Argument at the hearing, whether it is the same in Substance, or the very identical words; there can be no doubt, but a Man may say, "Such a part shall be so, so" yet identically the same words, will operate; at present, as I think it doubtfull, I admit the Plea; I own, I wonder in this Case, that the Paper is brought in this Shape; why cd. not the Party plead it, at first, as a copy of a written Codicil, inadvertently destroyd; If Mr Allen had directed it to be written, (wch dont appear) it wd. have been a written Codicil: I don't think it an Objection, that this is the Copy of a nuncupative Will, if the original was reduced into writing & inadvertently destroyd. The Qu.n in Stonewell's Case, wh.r the Nuncupative shd revoke the written Will? It is not stated wh.r the Nuncupation was read over Here the Nuncupation was written & read to the Testator; there are 3 Ws who attest it: the Statute dont require the Nuncupation to be signed by the Testator, or attested in writing by the Ws. The Q. is, wh.r the Statute is to be construed so strictly, as to admit of no Interpretation, & wh.r where it is not an exact Copy, in immaterial Circumstances, the Ct can pronounce for the validity of it; Dr Wynne's went to obviate my doubt; their destroying the Originals, seems to have proceeded from a Tenderness to Mrs Allen; this being a Copy, cd. not be read over; the Engrossment was not read to Deed but the Paper from whence it was taken, was read over to him; I think on the whole, as this Case is of the Impression, the Allon ought to be admitted as laid .....

Prerogative — Farrant no 122 — Hewson v Keeling & Keeling — Cricket.

Q. Can a Party who has propounded a Will, after plead Incapacity in the Testator?

Dr Collyer ... Hewson is the Deed; a Condidit was given of a Will of a prior date, & in a subsequent Plea of the same Party, was an Article pleading Incapacity; the Objection taken, is, that the 2 Pleas are contradictory, & can not be admitted to Proof, as the nature of the Cause is thereby altered

Dr Wynne ... The Cause commenced by Caveat agt a Will of the Decd dated Oct. 8. 1766 the Caveat was warned, & an Appearance given for ..... as Exors in a Will of July 1766. this therefore is a Testamentary Cause, & no other; their Petition is, to withdraw the Condidit, & then give this Allon; if not, allowd so to do, that they may alter their Plea: in this Act, they allidge. they have a double Interest; what sort of Cause is this

Dr Hay & Judges ... This Cause began by Caveat, & is testamentary; the Ct will not allow you to make a different Cause of it; in your Condidit, you plead the Will; in your Allon, you plead your being a Daughter; it may be proper to shew, he wd. not make a Will to prejudice her, the Qu.n is only generally wh.r the Allon is admissible, being given by an Exec.x a Daur.r