Law, & according to the Intention of the Testator, which must depend on the Law; The word Wife, has only a legal Idea annexed to it, & cannot mean one who is not the Wife; if a Legacy was bequeathed to an incestuous Wife, she could not take it, as the Wife; here the Deed had two Wives, he lived in a felonious manner, Bigamy being Felony; he was therefore under a kind of collusive necessity, to benefit this woman, & so drew the Will in this manner. By the words, "Mary my Wife," you will conceive he meant "Mary my lawfull Wife," forming your Idea on legal Grounds; there are no words to denote his Intention to benefit Prosper, no description of her, therefore I hope you will reject this Plea...

Dr Wynne... I must answer to Dr Harris's peremptory Objection, that the Question is not, who is the Wife in the Eye of the Law, but who was the Wife in the Eye of the Husband (Ld Cheyney's Case 5 Co. 68 is similar to the present) My Client cant be accused of any Misbehavior; we plead the Deed when he married her in 1708 pretended to be a Batchelor, the other Party never claimed the Deed for her Husband; therefore my Client was the apparent Wife, she lived with him 30 Years, & was in all respects innocent of the Transaction; the Expression, "My Dear Wife," in some measure points out the meaning of the Testator, for we plead her being a good Nurse to the Deed, now can it be supposed he meant by those Words, the Wife who had not lived with him for 30 Years before his death; where Explanation is necessary the Ct will always admit it, will I doubt not, admit either of the Parties to shew herself the Person intended by the Deed...

Judge.... I think this a Case of Consequence, not with respect to the Estate, but the Matter in debate. The Fact is, a man had two Wives at the same time, the last Wife lived with him 30 Years before & to his Death; the first did not cohabit with him at all; The 2d Wife was then a Wife de facto, tho, not de Jure: the Question is, wh: the Ct can admit Evidence to shew, that by the words "My Dear Wife." the Deed meant his Wife de facto? in general the Doctrine is undeniable, that no Evidence shall be allowed to contradict what appears on the face of the Will, as was determined in a Case before Dr Betteswortb, where "a man left a Legacy to his lawfull Wife"; he having 2 Wives; the word, lawfull, had so fixed a Sense, that no Evidence could be received against it; so let the Parole Evidence be ever so strong, it cannot be received agt the positive Sense of the Words of the Will. The Distinction taken by Dr Wynne, is, that you cant contradict, you may explain the Words of the Will; the Question then is, wh: the Idea now offered may be received, as explanatory? & I think under the Circumstances of this Case, (the word, Lawfull, not being used) the Words May (considering, Dear, in a large Sense, as Beloved, & Affectionate,) serve to explain this Will, & shew he meant the Benefit should accrue to the Wife de Facto. I think I may admit the Action, as the Doubt is not who is the lawfull Wife, but who is the Executrix. If he had added descriptive words, viz. "My Wife who lives with me." no Evidence c: have been received to contradict them. "Carleton Smith 1723 or 1724 left his Estate to his dear Wife Mary, another Woman, named Frances, claimed it as his first Wife, & contested for her Interest, as Widow, not as the Person meant; the Ct allowd her to oppose for her Interest as Widow" — This not necessary, I thd take the lawfull Wife, as such, to be the Person meant, but I admit her to shew it if she can, & the Wife de Facto to do the same.....

C. Shame

Plea admitted

v. Fol. 378. where Dr May pronounced in favor of the Wife de facto

Prerogative

Stevens — No 127. — Ames v Ward — Cheslyn

Dr Harris, Calvert — Dr Wynne & Burrell

Q can a Minor not quite 14. make a Will to dispose of personal Estate?

Q Was this Will obtained by Imposition or undue Influence?

Dr Wynne..... Elizabeth Ames the Deed being under 14 Years of Age when she made her Will, & there being particular Circumstances, in order to clear up things the better, it will be necessary for me to set forth the Motives of her doing it. The Deed was the Daur of Wm & Thomasin Ames, who being in very necessitous Circumstances, she was taken care of by Mrs Mary Sanderson her Grandmothers half Sister, who being possessed of 2.000 L personal Estate & 2 Farms of 180 L p An: made her Will 15 Aug: 1763 & therein devised her real & personal Estate to her Niece Eliz: Ames, charged with an Annuity of 20 L p Ann. to Sarah Wilkes, & in case Eliz. Ames shd die under 21 & without Issue, directed the said Estates to be sold, & the money to be paid 1/4 to Eliz. Brooks. 1/4 to Sarah Boardman 1/4 to Xtopher Sayers & 1/4 to Anne Masters. and after several Specific Legacies gave the Residue to Eliz. Ames, & made Jas Ward & Gibson Lucas Esqrs Exors.

23 Jan. 1765 Mrs Sanderson entered into an Article with Nicholas Jackson for the Sale of the said Estate for L 377 5s to be conveyd to him on, or before 6 April 1765.

9 Feb. 1765. Mrs Sanderson died without re-executing her Will whereby the Article for Sale, became a Revocation, as to the devise of the real Estates at Wymondham Norfolk

5 March. 1765. Mrs Sr Ward & Lucas proved the Will. And it was thought advisable, that a Bill in Equity shd be filed for a specific performance of Covenants; accordingly a Bill was filed, in the name of Eliz: Ames by her next Friend, agt the Exors, Mrs Wilkes the Annuitant, Jn Atkins the Heir at Law of Mrs Sanderson, Mr Jackson the Purchaser, & the several other persons to whom Mrs S. gave the money, to 21 & without Issue; thereby praying that the Will of the Testatrix might be established & the Trusts carried into Execution, & that the Heir at Law & all other Parties, might join in the Conveyance thereof, & for other purposes.

Miss Ames after her Aunts death, falling into a bad State of health, Mr Ward thought it right to place her at a School near London, where she might have the Advice of able Physicians, & the Benefit of a milder Air than Yarmouth; he accordingly removed her to Mrs Musgraves School at Hammersmith, but finding her health visibly decline, he advised her to settle her Affairs & to make a Will & provide for those Legatees, who w: have been entitled to the freehold Estate, in case she had died under Age, without Issue: she seemed unwilling to do so, & desired to leave what she had to Mr Ward, & he with great difficulty prevailed on her, to leave 30 L p An. Apiece to her Father & Mother, if they shd happen to be alive nor would Mr Ward have accepted of the Residue of her personal if it had not been with a view to apply it in the same manner he proposed to her to leave it. These were the real Motives for prevailing on the Deed to make the Will in contest, but as they are not in proof, they cannot be set forth. Miss Ames, whilst she was in Town wrote the Instructions (the precise Time does not appear) from which a Will was to have been made when she was 14. (wch would have been 7 Sep: 1765) Mr Ward apprehending no Person c: make a Will till 14. but he being informed she ld not live many Days, he on the 9th of July 1765 wrote to Mr Goddard, the Drawer of the Will, requesting him to attend her, relating to her Will. Saturday July 13. Mr G. attended Miss Ames & took Instructions for her Will, wch was drawn, laid before Council, & approved, 15th July. She executed her Will, in the Presence of Mr Goddard & Mr Chapman his Partner, & on the 17th Miss Ames died; The Facts of taking the Instructions & executing the Will are fully & minutely set forth in Mr G's