remove her, from the rest of the Children, & she believes Miss Ames thinks, she is now in my House —
Miss Ames, when pressed by Mr G. takes the Paper out of a Trunk, & says "there are what you want;" when pressed, she determines not to be seized, says she does not understand it, & calls Miss Thompson to her Assistance, who came, & leaving open the Door G. heard Miss A. say to her, they want me to make a Will — She does every Act with Reluctance; there is a kind of Civil force put upon her, at the signing — great Regard ought to be had to her tender Age; I can find no Instance of any Will of a Person under 14, established by this Ct or any other Ecclesiastical Ct. I agree with the Gentlemen that Mr Wards Honor is concerned, but if the establishing that, was Mrs Wards view in this Suit, she was ill advised to bring it, as it is likely to have a very different Effect from what she wishes; if that was not the Motive, she is then in the common Case of all Exors. . . .

Dr Wynne . . . I looked on this as an amicable Suit, by reason of the Agreement mentioned above — We are to enquire whether this is such a Will as can be established? the Dr made a preliminary Objection, that the Council shd produce Instances of the Wills of Minors of 14 being established; I am told, a Schoolboys Will whereby he gave all to his Schoolmaster, was established by Sir Geo. Lee, but it dont depend on that; the Law of England as to last Wills of personal Estate, is merely the Roman Law except where, it is altered by the Statute or Common Law of this Land; by the Roman Law a Girl might make a Will at 12, a Boy at 14 — Godolphin Part. 1. Cap. 8. lays it down that the Ecclesiastical Court can establish a Will of Lord Coke lays down 17 as the proper Age but assigns no Reason why — In Bishop & Sharp 2 Vern. 469. It was agreed a Female may make a Will at 12, a Male at 15 if proved to be a Person of Discretion.

Vid. Domat. Civil Law

Godolphin Part. 1. c. 8. §1 Orph. Leg.

Co. Lit. Lib. 2 cap. 8. fo. 90.

2 Vern. 255-328. Gilbert. 74 . . . Hyde & Hyde in Chancery, no Dispute was made, but that a Male of 14, a Female of 12 might make a Will of personal Estate, & Mr Gilbert said, Ld Keeper Wright agreed thereto in Sharp & Sharp, wherein they followed the Rule of the Civil Law, wch says, "in masculis quidem quartum decimum annum spectandum, in faminis vero duodecimum quidem completum. The Dr threw out the necessity of accumulating Cases, else I shd have thought the Rule so much established, as to have made it unnecessary; I agree with the Dr, that the Ct will be jealous & attend minutely to Circumstances; the Age is an incidental Circumstance, & the Tenderness thereof varies the degree of Proof requisite, I see no reason why the Male may not make a Will till 14. & the Female may at 12, but the Law has drawn the Line; the present Will could only convey personal, not real Estate, or money issuing out of Land, as it is only attested by 2 Witnesses. the Prayer of the Bill, is to carry the Trusts into Execution, it never can be said, that Mr Ward, as her sole Keeper &c. make that prayer, taking the Will to be revoked, & intending to come in himself; the Will &c. not operate so as to entitle him; the Residue wd not be so great as represented, there fore no such Temptation as insinuated. Miss Ames came fairly into his Hands; the Parents were in low Circumstances & supposed to be dead; it was a justifiable & laudable Design in the Exor. to advise her to make a Will, as the Consequence of her dyeing intestate wd be, that the Father who was a Sailor & had deserted his Wife & married another Woman, wd have been entitled to the whole, & the real mother left to starve; Miss A. by Will left the Interest of the whole to her Parents for Life. So far then, the Transaction is fair — But if it was not her own voluntary Act, it &c. not be established, however propa-

cf. Ff. Lib. Test. fac. possunt . . .

supposing she left only £ 2000 l

N.B. the L. was this. A. by will after some Legacies, gave ye residue of his personal Estate to his Dr & his Real Estate to her & her Heirs, & if she died under 21. he gave his real Estate to his Brother. The Dr died at 16 & by Will gave all her personal Estate to B. ye Estate being subject to a Mortgage, ye Bro: who is Heir to ye Testator, his daur br his Bill to have his Mortgage paid off out of ye personal Estate. Q. Shall the Personalty in B's hands be applied to exonerate the real Estate? . . . . . .

the Contents — Does it appear Miss Ames who had a right to the Case of her, she was put into the Case of the Exor by her Aunt; I cant devise properer means to inform her of the meaning of a Will; than was taken; Mr G. first demanded to see her, on talking on the Subject, her answers were very rational, nothing childish; She was in a bad State of health, did not care to talk, & was rather peevish, & any body wd be so. Mr Ward's Idea of 14 being the proper Age to make a Will might be taken from the Common Law, by wch 14 is the stated Age, for several Acts; Expedition was necessary, if it was only to provide for her Mother; I dont know what use can be made of the Observation, that she thought herself at Mrs Mungrowes; she might be fainting: There was no prompting when the Trunk was opened; she delivered the Instructions sealed up; she had her memory entire, directs a Legacy to be given to Mr Lucas, & to distinguish him, from the Clergyman, says the Esquire. G. did not draw the Will immediately, but enquired about her Capacity of Dr Reeves, who answerd, he believed her capable; then he drew the Draft, carried it to Mr Perryn to peruse & settle, informing him of all the Circumstances; he approves & signs the Draft; I will allow there was a Reluctance & Peevishness in the Deed, but I appeal to your notes, wh: that proceeded from any Dislike of the Contents of the Will, or from Pain & Languor, if so, that Objection wd hold equally agt the Execution of every Will in the same Circumstances; Persuasion will not appear in an unfavorable light, if was an Act of Charity, if the Party was not interested, & if it was only to induce a Party to do an Act she wd freely have done if in health. Mr G. asked particularly, if she acted of her own free Will, She answerd, very expressly, "I chuse it; with respect to the delivery; she bade Mr G. keep the Will, till he saw Mr Ward, wch was a confirmation of what she had done: the Case is not unfavorable, & the Will may be pronounced for, as fairly obtained; Mrs Wards motive, to take off any Imputation from her Husband, was good, but that could not be her sole motive, for she was bound to proceed as a Minor was concerned, & without laying the Will before the Ct, as Executrix she would not be justified . . . . . .

Dr Burrell . . . I am Council on the same Side with Dr Wynne, in support of the Will of Miss Ames; I likewise understood, this was in the nature of an amicable Suit, till Dr Harris by the hostile manner in wch he opened, proved the reverse; the Question before the Ct respects the Will of a Girl not quite 14. To the validity of wch, 2 Objections have been taken; first, with respect to the manner of obtaining it; 2dly as to the Person who made it; I will begin with the latter, because if the Testatrix could not make a Will, it will be of small Importance, for me to consider, whether it was properly obtained; Dr Harris said the Will of a Minor under 14 is not good in Law, & called upon us to produce Instances, where such a Will has been established; it thus becomes necessary for me to enquire into the Law, & find out, if I can what is the precise Time fixed to give force & Validity to an Act of this kind; I have looked into different Writers on this Subject, & I freely own I cannot find the Line drawn with that precision & Exactness, as to determine the Question, the Opinions of Writers, x x have varied so much, that the Point seems at this Day, x dubious & uncertain, and in truth, the Question appears to me, entirely open; Godolphin says An Infant male at 14, & a Female at 12. may make a Testament touching Goods & Chattels. Swinburn. Part 2. §2. a Boy cant make his Testament before 14. nor a Girl before 12. after those Ages they may dispose of their Goods & Chattels, not only without the Consent of their Curator or Guardian, but also without the Authority, Consent of the Father, if he or She have any Goods of their own — Most of the Comementators on the Civil Law are of the same Opinion, and the Roman Law being the Ground on which this Question must be determined, unless the Law of England speaks a different Language

Orph. Leg. cap. 8. §1. —