it remains for me to enquire how the Municipal Law of this Country stands with respect to the Ability of minors to dispose of their Fortunes by Will.

34 & 8. c. 5. has prescribed 21 as the Time when Persons can dispose of real Estate by Will; for till that time, by the Common Law they be accounted Infants

Co. Litt. Lib. 2. c. 5. fo 90.

Littleton says an Infant of the Age of 14 may make a Will, but Ld Coke in his Comment on that learned Man, says the meaning of Littleton is, that if after his marriage, he accomplish his Age of 18 Years, at what time he may make his Testament, & constitute Exors for his Goods, Chattels, & the word are so to be xx x x understood, as may stand with Law & Reason. I wish Ld Coke had assigned his reasons for this Construction

5 Jones 210 — Brown v the Chancellor of Litchfield. Prohibition was prayd to the Consistory of Litchfield, for that a Testament of Goods of one under 16 being contested, Sentence was given in favor of the Will, but Prohibition was denied, for the Cause is proper for the Jurisdiction of the Sp: Ct & the determination at what age a Person may make a Will of Goods appertains to them, & if the inferior Ct has given Sentence against Law, the Party may remedy it by Appeal.

2 Mod. 315 — Smallwood v Brickhouse. The Suggestion was, that a Bⁿ under 16 had made a Will, & the Prerogative Ct proceeded to the Proof of it, whereas by the Common Law a Person is not capable till 17, therefore Prohibition was prayd: & that the Comon Law has determined the Time, Cokes Comment on Littleton was cited, 1 Inst: 89. b. where 'tis said that at 18, he may make his Testament & constitute Exors, & the Age of a Person is triable, also in pais but the Ct said, the Proof of wills, & Validity of them belongs to the Sp: Ct, & if they adjudge a Person capable, the Ct will not intermeddle, for 'tis within their Jurisdiction to adjudge, when a Person is of Age to make a Will, & sometimes they allow Wills made by Persons of 14, & the Common Law hath appointed no Time, so that it depends wholly on the Sp: Law; therefore a Prohibition was denied . . . . . .

Thus then the Common Law, having left it uncertain, at what Age a minor is capable of making her Will of personal Estate, & the Ct having (in Smallwood & Brickhouse) referrd that Point to the Decision of the Sp: Ct, which seems to have adopted the Rule of the Civil Law, & fixed 14 for Males & 12 as the proper Era for Females, there surely can remain no doubt of the Validity of this Will, in point of Law. And respectable as Ld Cokes Opinion is held in general, it is overruled by 2 Determinations in the Prerogative Ct viz. Atkins v Atkins. 1686. where the Will of a Boy of 14 was held good — Newby v Earle 1758 where a Boy aged 16 left everything to Earle, his Schoolmaster, (at Sydenham in Kent) to the prejudice of his Relations, yet unfavorable as this Transaction appeared, the Court established the Will — But it is said, the manner of obtaining miss Ames' Will, was so fraudulent & Imposeing, as totally to invalidate it, whatever the Law might determine as to the first point; So much has already been said by Dr Wynne on this head, that I will not take up your Time in Recapitulating it, & shall therefore content myself with recalling to your Mind, the Will of Mrs Sanderson wch gave rise to this Transaction, had she lived to carry her Agreement into Execution, we shd have had no Occasion to trouble the Ct now; but her Death, & the Opinions of Eminent Common Lawyers, respecting the Operation of such Agreement, added to miss Ames' bad State of Health, induced Mr Ward

before Ld Raynes
before Sr Geo. Lee

to wish she might make a Will, in obtaining wch, I can not see any Appearance of Unfairness, any Grounds for the Ct to declare, it was obtained by Imposition, or undue Influence;

Mr Ward advises her to make her Will, she agrees, he recommends a Person of Eminence in the Law, introduces him to her; when informed of her Danger, he writes to Mr Geldard to go & take her Instructions, who went at the time appointed, to the School, was introduced to her by the Mistress, & informed her of his Business, she was indeed peevish & fretfull, but not averse to give him Instructions, she called for her Trunk wch was kept by the Schoolmistress: Pierce opened it, & gave a Paper sealed up to him, wch she said contained the Instructions for her Will, when asked if she wd add any thing, she said nothing but 25£ to Mr Lucas, being asked wch Mr Lucas, she replied the Esquire, has this the Appearance of an unfair Transaction? much Stress seems intended to be laid on the Instructions being sealed, & an Inference thence drawn, that they were not her Act, but her Delivery of that Paper to Geldard, & her additional Legacy to Lucas (wch can't be denied to be voluntary) will destroy that Hypothesis; it was thrown out, she did not understand what a Will was, supposing that true, did not G. repeatedly explain to her y meaning of a Will, & was she not desirous of understanding it? did not G. ask if the Instructions were voluntary or by the Advice, or improper Influence of any other Person, & did she not say, they were of her own free Will? not content with these Enquiries, Mr G. asks Dr Reeves opinion of her Understanding & wh: he thought she was capable of making a Will? he answerd in the Affirmative; the Will is then drawn up, laid before, & approved by Mrs Perrin & executed the next Day: You will observe Sir, that my Clients are not likely to be benefited by the Determination of the Ct having agreed to relinquish any right, they might have, under the Minors Will, being well satisfied that Mr Ward never intended to take any thing under it, but was desirous that y Legatees in Mrs S.' Will might not be ousted, of the Benefit intended them, by Mrs S. in Case of miss Ds death, & therefore was earnest, miss A. shd confirm it to them by Will, or gave him an Opportunity of doing it; upon the Whole, I hope you will be of Opinion, that miss S. not being compleatly 14. was capable of making the Will in question, & that it was not unduly obtained as has been suggested, & therefore ought to be established . . . . .

Dr Harris . . . . . The Deed was under 14 at her death; she had been under the Care of her Aunt Sanderson, who devised the Residue of her Estate to her, if she attained 21, if not, part of it was devised to several other Persons, which was to arise by the Sale of a Landed Estate; but after the making her Will, Mrs S. entered into a Contract for Sale of the Estate abovementioned, Such Agreement therefore was a Revocation of the Will, pro tanto. The Prospect of Mr Ward in persuading Miss Ames to make the Will in question, was very evident; he wd get 2000£ at all events, & in Case of the Agreement being declared a Revocation of the Will made prior thereto, he wd be entitled to 5000£ more; the Dr who led on the other side, closed his Argument with saying, the Articles entered into between the Legatees in Mrs S.' Will, — miss As next of Kin, & Mr Wards Children & Widow, could not be carried into Execution, as one of the Parties was a minor, if so, it is not binding, but of no Effect with respect to such Minor; the Gentlemen expressed their Surprize at meeting with Opposition, had they not been aware of it, they wd have scarcely have come prepared with Authorities to support their Cause; I said it was doubtfull, wh: a Female could make a Will before 14. I know what the Roman Law says, & the Gent: have quoted it fairly, but the Civil Law is no part of the Law of this Land; if they can, the Drs may shew when it has been adopted & received in England, the Instances brought are only such, wherein Obiter Opinions have been given, but they have never been reduced into practice; Ld Coke in his Comment on Littleton thinks a minor of 14 may not make a Will, & says that Great Writers Words must be understood, as may stand with Law & Reason;