God forbid, that Law & Reason shd not always go together; whatever may be the Roman Law, there is no Reason it shd be adopted here; I doubt Strahan & Godolphin have taken up the Question too hastily; none who were sub patria potestate could make a Will, take it in the Extent, Miss A. had a Father & Mother living; By the Laws of Holland no Person can make a Will till 16 – The Case quoted by Dr Burrell was that of a Boy of 16, in wch there was Evidence his Relations had used him cruelly, & Mr Earle had been very kind to him – In the Case of Atkins v Atkins. 1686 Sir Richd Raynes was of opinion, a Boy of 17 might make his Will, but there the Contest was between a Brother & Sister, and there were no Parents living; the other Cases cited by the Gentlemen shew only Obiter Opinions, & that the matters in Contest were referred to our Cts, who do not appear to have any Decisions on this Point; By the Practice of this Ct. no Judgement has been given for the Will of a Person under 16 – The Deed in the present Case, has given a very small Pittance to her Parents, & all the rest to her Guardian, to whom she professed no Regard no Respect, no Obligations; she had been under his Care only 3 or 4 Months, during which he brings her to Town from Yorkshire in a dying Condition; I must not omit the Circumstances of this Gentlemans behavior to Miss Ames; soon after her Arrival at London, he throws out Words, that he thought it necessary she should make a Will; I wish he had gone farther & urged the necessity of his being Exor; you will observe how strangely solicitous & anxious he is; he prepares Mr Geldard by that seeming necessity – It wd have been material if she had made the Instructions; but G. says, she made them by Wards directions; does it appear, she sealed them up? any body might get at them – Geldard behaves civilly; his depon has the appearance of fairness, but he is deputed by the Guardian; Wards Letter to him, shews an uncommon Earnestness to get the Will in question executed by the Deed; she drew the Instructions & named an Exor & Resid^y Legatee before she knew what a Will was; the Instructions are read over to her, & when the Will is brought to be executed she knows nothing about it; it is thus plain, she was partly incapable of the Act she did, & was partly cajoled into doing it, & partly frightened; like a Person who was about to undergo some dreadfull Operation, she would have put it off if she could; when she found they wd come again, to get rid of being teized, she thought she might as well do it then, as she found it in vain to oppose; the Question is, wh^r she was intimidated, not wh^r she was rightly so; if she thought she c^d not refuse her Guardian, it is all one, She was carried to a Saviers Shop, & yet thought she was at Mrs Musgraves – By their Account she was only sub modo capable, as far as her Age wd permit; her Reluctance continued to the End; she wd have another Person sign for her; the Terror she was in, c^d not proceed from Her Disorder of Body; they stuck like leeches, said, they would come again, & by this Means gained their End – This I insist was undue Influence practised upon the Deed –

Voet . . . . .

New Eq. v. Earle. 2n: q truth of Dr's assertion as to q^e: of till usage . . .

Dr Calvert . . . . The Gentlemen are sensible, it wd be a leading Objection, that the Person obtaining the Will, is principally, if not solely benefited thereby. It is said indeed, he did not intend to benefit himself, & that he wd receive much advantage if the Will was established; I had a bad Opinion of the Cause before, I have now a much worse opinion, because the Gent^n go out of the Evidence, in which there is not a Title of this; It is extraordinary, that a Person should first obtain a Will, & then litigate it, only to give back to the Parties benefitted under it, the Shares to wch they were entitled therein; I dont understand how he wd be now benefitted by the Revocation; if the Agreement entered into by Mrs S. with Jackson, is construed a Sale, the Money arising from that Sale will become personal Estate, & follow the Residuum bequeathed to Miss Ames; It is not money arising out of the Estate, but from the Sale of it; Mrs S. having disposed of those Estates in her Life time, they are gone from the substituted Legatees; I should then suppose 700 £ might be an object with Mr Ward; I will contend about the Civil Law, because that is not the Law of this Court, it is therefore incumbent on those who wd avail themselves of the Civil Law, to shew it is adopted here; Godolphin & Strahan are setting down the Civil Law; the Books cited in the Margin are Writers on the Civil Law – It is the Business of the Gentlemen, to shew it has been received by Decisions we are not to prove the negative; an Englishman is bound by the Law of England; Ld Coke is no inconsiderable Authority, he is not used to be mistaken in respect to the Laws of this Country – This is not a common Case, but one of a very suspicious nature; the Deed was very liable to Persuasion & Imposition; the Intention & first Design of this Will is very material, the Person from whom the first motion came, is so, likewise; the ostensible reason is to save Mr Ward Trouble, I think the probable Reason, was to put a large Sum into his Pocket; As to the Persuasion, the Caution given by Swinburn is proper that Persuasion, is not laudable, when given to a Person of weak Judgement, who is under the Government of the Adviser when the Estate wch is to be disposed of, is great, & I will add when the Disposition made in consequence of such Persuasion is totally in favor of the Adviser; out of 1500 £ given away in Legacies, 500 £ is bequeathed to Miss Ward, the Exor's Daughter, Tho, an Annuity is left to the Father & Mother of Miss Ames, yet it appears, that they were supposed to be dead; When Mr Geldard was introduced, did any thing drop from Miss Ames, to shew, she was desirous of making a Will? did she say, I am glad he is come, or any thing of that Kind? No. She said barely, I shall remember him; When Geldard came to her (at Mrs Musgraves Lodging wch she had taken for Miss Ames) she did not speak to him; on his asking her, if she had any thing to say to him, she was silent, which he construed to proceed from Persons being present, & therefore desired them to quit the Room; The Instructions appear to have been written at the directions of Mr Ward, in London; When G. received the Instructions, he carried them to Mr Kitchen an Attorney to reduce them into a Legal Form, which being done, they are sent to Mr Perryn for his Approbation; Dr K. is consulted about her Understanding & Capacity to make a Will but he might not have seen her for the 2 last Days, when

q. aper.

NB.