it clearly appears she was much altered for the worse, as to the Execution, Miss Thompson endeavoured to prevail on her to do it; she either did not know what she was to do, & thought they were imposing on her, or else she had no Inclination to make a Will - But say they, the meaning of a Will, & the nature of the Transaction she was about to execute was explained to her, & therefore she must understand it; Could a Person who had drawn Instructions, be so ignorant, as not to know what a Will was? It was not merely, "I dont know the form of a Will, but it must be the nature, for Chapman tells her, it is to dispose of her Effects, so he considerd it, as if she did not understand the nature of a Will; They must apprehend they were doing something wrong, otherwise they would not have asked if the Will was of her own voluntary Motion, or by the persuasion & Influence of another? they wd: never have asked her so odd a Question, if they had not thought the Case suspicious Chapman speaks of several Expressions, wch Goddard says fell from the Decd at his first coming into the Room, now Chapman was not admitted, till Miss Thompson had been to persuade the Decd to execute her Will; This account has the appearance of an agreement between C & G. what to depose; when Miss Ames was asked if she wd: execute the Will she replyd, "I dont care"; a strong presumption this she was unwilling & wished to put it off gentcely; when asked what alteration she would have, perhaps Mr Lucas might just then strike her; Her being removed 1/2 of a Mile, without knowing it, shews she was very weak indeed; this Will not only appears to have been made by a minor, but by a Minor in extremis, even allowing the Instructions to be her own, wch indeed she dont appear to have ever understood; A Will obtained under such Circumstances, is very much to be suspected, & it is very dangerous to establish it, where that Person is to be benefitted, who had the entire Care & Government of the Testator.

Judge Dr Hay } If I had any Doubt, I would have heard the Reply very willingly - The Case is very particular, I remember none like it; Miss Ames the Testatrix, is under 14. She has therein appointed James Ward Esq Exor & Resid: Legatee, who appears to have had the Care of her Education; a considerable Interest, (at least in reversion) is certainly vested in him, if this Will is established; There are some Estates left over by the Will of Mrs Sanderson in case of Miss Ames: death under Age, & some doubts have arisen, how they ought to go: I shall say nothing of the Impropriety of a Minor making a Will in favor of her Guardian, but I shall confine myself to the Legality only, wch is now to be determined -

The Will is dated 15 July. 1765, the Decd died on ye 17th. of ye same Month on this 2 Questions arise.

1 Qu: Wh: the Decd was of sufficient Age to make a Will, or wh: it was made - by a Person in Nonage, almost in extremis, & so, is void in Law?

If this should be so, the Circumstances are out of the Case, but if

it shd appear, the Decd was of age to make a Will, the next Question

2 Qu: was any Imposition, or other improper Practice made use of to attain this Will, & had the Decd a Capacity at the Time she executed it, adequate to so solemn an Act?

As to the 1st Qu. By the Civil Law, a Male at 14. & a Female at 12. may clearly make a Will. But Ld Coke has been cited to shew, that by the Law of England, a Person could not make a Will, till 18. On this Point, I must observe, that so many Authors have since Ld Cokes Time, been of a contrary Opinion, & their Sentiments have been confirmed by frequent Determinations, that a less Age than 18 is sufficient to give Validity to that Act, that I conceive the Law to be now clear, that 18 is unnecessary; By the Practice of the Courts a Minor at 17. may have Probate, & act as Executor; but if he is made before 17, Admon must be granted to his next Friend, till that Time, & then it expires of course; this is contrary to Ld Cokes notion, for if a man may manage an Estate for others, at that age, surely he is of Capacity to dispose of his own by Will; the Law seems capricious in this respect, as Admon cant be taken on account of Minority under 21, & a Probate may at 17, though both equally respect the Management of Affairs. NB

The Common Law has not precisely settled the Age when a Person shall make a Will, it only says at years of discretion, without pointing when that Discretion commences, In Brown v the Chancellor of Litchfield, & Smallwood v Brickhouse, Prohibitions were denied - The Law of Executors page. 10. 253. An Infant of years of discretion may make a Will of Goods & Chattels at 14 Years of Age. In all Cases the Ecclesiastical Courts are governed by the Civil & Canon Laws, where those Laws are not repugnant to the Law of the Land; nor do I find by adopting the Civil or Canon Law in this Case, I should determine in contradiction to the Common Law, my Predecessors have thought so as is evident from the Cases of Atkins v Atkins 1686. before Sir Rich: Raynes, & Newby v Parke 1758 before Sir Geo. Lee, quoted by the Council; in the last, the Ct was of opinion, that a Male may make a Will at 14 & a Female at 12. wch is the Time of Marriage allowed by the Law of the Land; It has been urged that Swinburn & Gdolphin refer only to the Civil Law, but I do not think so for Swinburn gives it as his Opinion, that the Civil Law in this Particular, is the Law of the Land; The Case of Hyde & Hyde is clearly in point, there no dispute was made but that a Male of 14 & a Female of 12 might make a Will of personal Estate; Some Line & Rule must obtain; for it is not so well to have it at large; the Common having laid down no Rule to guide my Decision, what can the Court do better than have recourse to the Civil Law; A Male Infant cannot by any Custom make a Will under 14. Says the Office of Executor 253. & Anderson. 14. If that is the Case, it clears up & tends to point out the time, when Capacity is supposed to exist; upon the whole, I think the Testamentary Age, shd be the same as the Anni nubiles, 14 for Males & 12 for Females; I do not wonder we have so few Cases to the Point, which is uncommon, rarely contested add to which, we have no Reports - It then comes to a Question of Fact; there is no doubt of the Decd having a sufficient Capacity; she did not make use of a Childish Expression, when asked by G. if he shd wait upon her another time, She answers "It is as well done now"! The material Question, is, whether, she was under Influence or Restraint, this is to be determined by the Evidence of Goddard & Chapman; there were 3 other Persons who could have given an account, but I have only the Evidence of the subscribing Witness

2 Mod. 310 ..... 1 Jones. 210. Perk. fo. 95. 2 Vern. 255. 328. Gilb. 74