A Servant talked with him, the morning of his death, when he was low spirited; the circumstances of his being so, may be a Proof of his Capacity; the most sensible Men are liable to be low spirited; If they meant to avail themselves of the Verdict, why did they not produce it. it is a Record: I dont beleive the Reason given; that could not induce the Jury to give the afd Verdict; it was to save the Forfeiture; that Verdict will only afford a Presumption of Insanity at the Time he killed himself, not at the Time he wrote the Papers in question; a Man may be seized suddenly; it cant be inferred he had no Sanity when he wrote these Papers, from an Act committed subsequent thereto; As to the internal Evidence of the Papers, the Dr did not enter fully into it; the Alteration in the Residue & the Executor, is a strong Presumption of Sanity No Incapacity can be collected from (the words endorsed on (B)) or from (the Paper wherein the Bank Note is enclosed, wch is superscribed "To the wretched Betty Covey, made more" "wretched by me, the enclosed to be delivered as my Exors think" "proper." The Bank Note was given with the Consent of the present Opposers — As to the Other Paper made when under his Disorder of mind, that part that can be carried into Execution is very proper, & must be pronounced for, & bears marks of Sanity, rather than of the Reverse . . . .

Dr Harris . . . 3 Witnesses swear the Decd appeared melancholly a Month before his death; it is impossible, the Reason assigned by Clay could be true, for it wd destroy the Law entirely, wch punishes Suicide, he must be presumed a Lunatic then, sometime before his death; he is stripping his next of Kin in favor of a Stranger; By the Will he provides for his Sisters; it is a very proper Will, he gives all to his Wife — The Madness encreased on him when he wrote (C) He then thinks People wont take his Money; he orders Thornton to dispose of his money in Legacies, when he had left nothing to give; he gives away his Wifes Cloaths, & strips her; (D) Its stronger still; there is a Paper, wch says; "To be given as my Exors think proper." but nothing is mentioned they have endeavoured to explain this, by another Paper . . .

Dr Hay. Judge . . . I think there is full Evidence, that the Testator was capable when these Papers were wrote: a kind of religious Phrenzy does not incapacitate a Person from making a Will; it is not such a Legal Insanity, as disables him: The Verdict goes only to the Time of the Act, it has no retrospect: Tho, the Decd was in a melancholly drooping way, no part of the Evidence goes to shew an Insanity sufficient to affect these Testamentary Papers; there is full Evidence they were his Acts, no one deposes to his Insanity at the time he executed them; Upon the Evidence before me, I must pronounce for the Will & A Codicils —

Wills & Codicils established . . .

Arches
Bye Day July 14

Goodwin — No 130 — Balch ol. Burton. v Burton — Faulkner

Dr Wynne — Dr Harris

Q. Shall the Conclusion be rescinded, the Proctor having erroneously suffered the Cause to be concluded, when he was ordered to plead?

Dr Harris . . . Our Prayer is that you would be pleased to rescind the Conclusion, in order that we may plead & exhibit an Inventory & Account, on the Oath of my Client; It is a Cause of Legacy Brought by Balch. Mr Faulkner, my Clients Proctor had Orders to plead, & to bring in the Inventory & Account, they were accordingly ready, but the

Ct being up sooner than usual, & Faulkner being absent, when the Cause was called over, it was unfortunately forms, concluded; it is very material to us, for the Extor says he has expended 60£ more than he has received of the Testators Goods, I hope you will not think the Request unreasonable, it is in your Discretion; you have sometimes done it ex Officio.

Dr Wynne . . . Notice was given of the Conclusion; as Faulkner gave a negative Issue, he shd have given an Inventory & Account, to shew he had fully administred: I am instructed to say Faulkner had notice the Cause wd be concluded, if he did not bring in his Inventory & Account; the several Steps taken down in the Assignation Book are the legal Notice; where a Cause stands, to propound all Acts if nothing is done, at ye next Court, it is concluded of course; the Dates shew the Proctor to be very much in fault; why did he not allege this at the next Ct after the Conclusion had passed; the Party himself appears to have been in Laches . . . . .

Dr Hay. Dean . . . . Here appears to have been gross Neglects & Delay, in a Cause of Legacy, it began 15 Jan: & then appears no Assignation till the 4th of May; there is no fear of Subornation of Perjury, because nothing has been done; I dont ask whether Notice was given, or not, the Proctor was bound to attend his Business in Ct. Mr Faulkner, may be unfortunate, but his Clients who employd him are more unfortunate; it is very extraordinary for a Proctor to give a negative Issue, & neglect the means to prove the Point; there is no doubt, if I refused to rescind the Conclusion the Ct of Appeal wd rescind it, & admit them to plead the Inventory & Account; it wd be Injustice in me to refuse to hear the Party; I shall therefore rescind the Conclusion, & make an Order that Faulkner & not his Client, shall pay all Expences incurred by the Delay

The Conclusion rescinded & the Proctor ordered to pay the Expences of the Delay . . . . . .

Arches — No 131 — Cave v Socket — Stevens

Q. Did the Judge right in rejecting an exceptive Allon, ought it not rather to have been reformed? . . .

Dr Harris. Wynne. Burrell — Dr Collyer. Calvert.

Dr Harris . . . . . Thos Corbett of Bromyard Herefordshire, Batchelor is the decd: he made his Will dated 28 October 1763, & thereof appointed Mary Cave Widow Sole Executrix, & Resid: Legatee.

1 April 1765. A Citation issued from the Consistory of Hereford at the Suite of Jane (Wife of Thos Socket) Cousin German of the Decd, agt Cave to prove the Will by Witnesses.

9 May. The Will was propounded, & a Common Condidit given, whereon the 3 subscribing Ws were examined, who prove Instructions, due Execution, & Capacity at the Time.

31 October. An Allon was given on behalf of Jane Socket, pleading Idiocy, & total Incapacity in the Decd. 18 Witnesses were examined on this Plea, amongst whom were Greenbank Sheldon, Sam: Mills, & Wm Hallward.

27 Feb. & 19 June 1766. In reply thereto, Allons were admitted on behalf of Mary Cave, on which the 3 Subscribing Witnesses, & 15 others were examined.

2 October Publication was decreed, & all Facts assigned to be propounded next Ct.

30 October. Cave without revoking her Proctor gave in an Allon exceptive to the Testimonies of Sheldon, Mills & Millward.

6 November. The Judge rejected the Allon, on wch an Appeal was interposed, as from a Grievance, to the Arches, wch now comes to be heard on the Question, Wh: The Decree of the Judge below shall be reversed? . . . The Objections to the Admissibility of the exceptive Plea, were, that in the said Allon of 27 Feb. 1766 there was, or might have been pleaded, every Particular contained, in the Exceptive Allon, that a Term Probatory had been assigned, & 18 Ws examined, & that to admit