1 S. Dr: T. Major brought in with the Affid.t of Scripts, a Will of 30 June. 1761 wherein Nuce Sterry of Wandsworth Carpenter was an Exor.

Majors Clients Answers have been twice adjudged redundant & not full.

1 S. M. T. Mr Patey haw: denied Sterrys Identity, Gosling gave an Allon, wch was admitted Bye Day M.T. of 4 Articles

1 Art: That Sterry was a man of good Reputation, had lived at Wandsworth 20 years, & that no Person named Lewis Stony had lived in that Parish, within the memory of the oldest Inhabitant.

2 That many of Sterrys Friends & Acquaintance used to call him Lewis, & believed his Christian name so to be.

3 Decd was never acq: with any Person named Lewis Stony, but was intimately acq: with Sterry, & had a greater friendship for him, than any other of his Acquaintance, & that such friendship was more strongly cemented by Decds Son marrying Sterrys Daur:

4 Decd since the Date of said Will, in conversation with Ja: Howson the other Exor, declared, his Bros: Sterry of Wandsworth was one of his Exors.

On this Allon 9 Ws are examined who prove the facts laid, & on the Condicit Westcot & Walter the 2 subscribing Ws have been examined, & clearly establish the Will.

Dr Harris — Restated, & said inter alia, they dont allledge any dislike to the Mother or Son; the Point in the Cause is, wh: Decd knew what he was about, when he executed this Will; It will appear from the first Will, (wherein the Decd has benefitted his Wife,) this Nuce Sterry, is Exor, by that name, & that Decd knew it then; It is in Evidence the Decd had reasons for knowing Nuce Sterrys name; Howson says, the Decd frequented Alehouses; this Will was fabricated & executed at an Alehouse. Wescote the subscribing W: did not see the Dec: sign it Walterfield says Sterry was called Story by mistake. Howson to 3 Jnd.t says, when he has seen the Dec: fuddled, he dont believe in his Conscience, he could be overruled, this will go to affect Howsons Credit

Evidence read.

Dr Wynne — No Will was ever more fully proved, nor Instructions more clearly ascertained; the Writer says, he saw the Decd several times successively; he is sure he saw the Decd seal it, & heard him declare, he published it, as his last Will. A man must be a very honest man, to whom Character so many neighbours w: speak; what Evidence can the Dr produce of this being a drunken Will; why, it seems the Man went to Alehouses; we must consider his Station; he was a Sawyer, & paid his Men there; may not a man be fuddled several times, & yet not addicted to hard drinking; I believe, farmers scarce ever make a Bargain without being drunk; it is no Objection, for he might, & must be on his Guard every body knows what work illeterate People make, when they make a Will; the only Inference to be drawn from the former Will, is, that the Drawer knew Nuce Sterry, or had enquired his name; this Will was made

without Sterrys knowledge; the Dr dont pretend he is not the Person meant; if he is not, who is? we had no business to point the reason of the alteration in the disposition as to the Wife: You will observe Sterry is only a Truste, for the Decds daur, not a Person benefitted; several Ws say they used to call him Luce thinking his name Lewis — I hope you will think the Will & the Intention of the Testator clearly proved —

Dr Harris — I hope you will favor me with a word in behalf of the Widow to whose prejudice this Will is made; I ground myself on its being an Imposition, made at an Alehouse by a drunken man; a Person is as much obliged to provide for his Wife after his death, as in his life time; I rest it on the Circumstances, Instructions are given, & the Draft, made in pursuance thereof, read to Decd who c: certainly distinguish between Luce, Nuce, Sterry & Stoney, he c: not be in his Senses, & not observe the difference; I it possible he sh: be unacquainted with the name of the Man to whose daur his Son was married; a drunken man is (I am sure) open to Imposition; I dont know what experience the Dr may have had, but this Will is inofficious, to the last degree, & you w: I think, be glad to set it aside; the Ws say the Man appeard sober; not that he actually was sober —

Dr Hay Judge — I cant enquire into the motives, why the Decd altered his Will, But wh: he did alter it; the Evidence of the subscribing Ws to his Execution & Capacity, is very strong; Sterry was not present Howson declines acting as an Exor, & assigns his Reason, viz. his inability to run about; the Office must have Satisfaction of the Identity; Orders were given for this Will, 7 or 8 days before it was executed, in the morning; if the Decd was not then very sober, how could he appear to be so? the W: declares, the dec: said he had made Sterry his Exor, wch can only refer to this Will; the Embarras in the mispelling, is only a mistake of the Writer he is identified by the Expression of the Will, viz. "Carpenter in Wandsworth." if there is no other Carpenter of that name, it identifies Sterry! & if there is a Constat of his Person, upon the whole I have no doubt of its being the Act of the Decd & must therefore pronounce in favor of the Will — Will establish'd

Ibid — Godwin — No 165 — Ly Mary Herbert, Pritchard. v Ld Gage. — Grene

Dr Harris & Wynne — Dr Calvert & Burrell

Dr Calvert..... The Will having been already established, we are now before the ct upon the Construction of a Clause, disposing of the Residue, as follows, "I also give, leave the rest I have, or may be got by Law, or "otherwise by my Exors herein named, (to whom I give all power "to pursue by Law, or otherwise) "to the Poor of Gr: Brittain, that "are really in Poverty, or in what other manner, my Exors shall "think best, for the Honor & Glory of God; they knowing my Inten=tions on that Subject." Mr Grene allledges this Bequest is void by Law, & therefore that the Decd is dead intestate, & his Client, Ld Gage entitled, as nephew & next of kin to his distributive share thereof, We say that the Decd had a claim upon the Cantillon Estate, wch amounts altogether to 140,000£, that the Constitution of Abp Stratford wch impowers the Ordinary to demand Security, is now in use, & ought in the present case to be enforced: that in the Province of York it has been usual to take such Security, as is verified by the affid: of Rob.t Jubb, & Rd Mackay — that Ly Mary Herbert lives abroad out of the Jurisdiction; that Jn Pritchard, is no Housekeeper, has no means of maintaining himself, therefore Grene prays they may give Security before the Probate is extracted;

Q. Shall the Ct oblige the Exors to give Security before the Probate is delivered to them?

Lindwood Lib. 3 Tit. 13. fol. 177.