

# REPORTS OF CASES

ARGUED AND DETERMINED IN THE

**Archies and Prerogative Courts**

OF

CANTERBURY,

AND IN THE

**High Court of Delegates:**

CONTAINING THE

**JUDGMENTS**

OF

**THE RIGHT HON. SIR GEORGE LEE:**

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“Σκέψασθε δὲ, καὶ διορί, οὐδ’ ἀν’ ἀπαις τις ἢ, κύριος ἔστι τὰ αὐτοῦ διαδίδαι, ἰδὼν μὴ  
ἐν φρονῇ νοσοῦντα δὲ, ἢ φαρμακῶντα, ἢ γυναῖκα παιδόμενον, ἢ ὑπὸ γήρως, ἢ ὑπὸ  
μανιῶν, ἢ ὑπὸ ἀνάγκης τινὸς καταληφθέντα, ἀκυρον κελεύουσιν εἶναι οἱ νόμοι.” —  
Demosth. c. Steph. β. n. Ed. Paris, 22.

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**VOL. I.**

CONTAINING CASES

From Hilary Term, 1752, to Trinity Term, 1754, inclusive.

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LONDON:

SAUNDERS AND BENNING, LAW BOOKSELLERS,

(SUCCESSORS TO J. BUTTERWORTH AND SON,)

43, FLEET STREET.

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1833.

TO  
THE RIGHT HONOURABLE  
LORD BROUGHAM AND VAUX,  
LORD HIGH CHANCELLOR OF ENGLAND,  
*&c. &c. &c.*

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MY LORD,  
THE following pages contain the Notes of a Judge of distinguished learning and integrity, who, from the commencement of the year 1752, to the close of the year 1758, presided over the Ecclesiastical Courts of this kingdom. They are transcribed from manuscripts written by himself after he had delivered his judgment in each particular case: and, in these manuscripts, he has not omitted the insertion of any case on which any decision, however short, was given. These invaluable records

PREROGATIVE COURT. counsel on both sides, I pronounced for Thompson's interest, but gave no costs.

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JODRELL *against* CROP.

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A codicil not admitted to probate, for want of sufficient legal proof.

*Dr. Hay*, for Jodrell. — Mrs. Sarah Boulter died a widow without children 12th October, 1748; left Susanna Crop, Richard Banner, and Sheldon Cradock, her niece and nephews and next of kin. *Caveat* entered, which Jodrell warned. Deceased made a will, dated 4th April, 1745, appoints her brother, Richard Cradock, executor and residuary legatee; he died 6th July, 1748; same day, she made a codicil of that date, whereby she made Jodrell executor and residuary legatee in the place of her brother, and confirmed all the legacies left in her will in these words: "I do hereby give and bequeath what I thereby gave to my brother, William Cradock, deceased, to my nephew, Mr. Gilbert Jodrell, and do appoint him executor of my will in the place of said William Cradock." The will and this codicil are propounded by Jodrell. This codicil is opposed by Mrs. Crop as executrix in a codicil dated 10th July, 1748, wherein the will is confirmed, but revokes the codicil of 6th July, makes Crop executrix, and gives the residue according to statute of distributions; she has also propounded another codicil, dated 11th June, by mistake for July, wherein legacies are given to relations and servants. The will is not disputed; the single question is, whether the codicil of the 6th July is the act of deceased, and if so, whether it is revoked by codicil of 10th July,

1748. Great variety and contrariety of evidence ; our witnesses say, on 6th July, Jodrell was acquainted with death of deceased's brother ; she often declared, if her brother died, Jodrell should be in his place, and ordered Jodrell to come to her as soon as he heard of his death. Upon information of Cradock's death, Jodrell went to deceased and told her of it ; she received him with great kindness, and ordered him to make said codicil of 6th July ; in presence of Hannah Pen and Elizabeth Balchen, Jodrell drew codicil from deceased's instructions, read twice or thrice to her, and she executed it by setting her mark ; she was eighty-three years old. For three years before she never set her name, but when her hand was guided by her brother. Proof of execution of codicil, 6th July ; incapacity not pretended ; they say Jodrell was only to have authority to act as her attorney ; contrary proved ; codicil not obtained clandestinely. Declarations in favour of Jodrell before death of deceased's husband in 1742, great affection for him ; in 1740 Jodrell married her niece in 1741 ; had a daughter by her, which deceased was fond of. 7th June, 1748, deceased told Jodrell her brother was ill, and if he died, she would make him executor, and put him in his place ; 6th July, Jodrell dined with Long and Henry Balchen at deceased's, and told them what she had done, in afternoon of 6th Martha Balchen came and staid at deceased's house. Jodrell saw deceased two or three days after that, and when he was out of town constantly sent messages to her. Their opposition is not as next of kin, but under the codicil of 10th July. We shall insist that the codicil was the act of Banner and of Martha and Elizabeth Balchen. No instructions for it ; it was con-

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certed and wrote at the house of Mr. Houghton between 6th and 10th July, carried by Banner ready drawn to deceased on the evening of 10th July. Pen, a witness for Jodrell, was at that time forced out of deceased's room. It is attested by Martha and Elizabeth Balchen; codicil 11th July, to benefit the Balchens; not one declaration leading to codicil 10th July. Deceased had no regard to Banner or Sheldon Cradock, and disliked Crop. Deceased died 12th October, 1748; Jodrell sent to secure papers, &c. on the 11th.

*Dr. Jenner*, same side. — Jodrell's wife died 12th March, 1745. Deceased much concerned, said she was glad there was a child by her, it should be the same as if her niece had lived; continued affection to her death. On or about the 7th June, she sent for Jodrell, and then declared she would put him in her brother's place if he died; behaviour of Elizabeth Balchen between 7th June and 6th July; deceased ordered her servants to let her see Jodrell whenever he came, for Elizabeth Balchen would prevent her seeing him if she could; deceased bid Pen sign codicil of 6th July, and deceased delivered it to Jodrell. Balchen opposed codicil being made, till her uncle could come; footman sent for him, who when he returned went up with the message, and heard deceased say, she had put Jodrell in place of her brother. Balchen swears Jodrell was not with deceased above half an hour. Jodrell would have deferred making the codicil till Henry Balchen came, but deceased would not stay. Jodrell dined that day at deceased's, and Long being sent for by Balchen, came in the afternoon; it was agreed at Houghton's, that something should be

done to revoke codicil of 6th July. Jodrell visited deceased every day from 6th to 15th July. While Banner was with deceased on 10th July, Pen was by force kept in another room. Banner never came afterwards to see deceased. Mrs. Crop never at deceased's house from 1736 to 16th July 1748, and yet she is executrix in codicil. 10th July, deceased had great dislike to Crop, and great affection for Jodrell.

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*Dr. Paul*, for Mrs. Crop. — We oppose the codicil as next of kin; deceased died 12th October, 1748; deceased's brother, Richard Cradock, died at six in the evening of the 6th July; Jodrell's codicil made at noon of said 6th July; main question, whether codicil of 6th, or codicil of 10th shall be established? execution of codicil 10th July fully proved. Jodrell not related to deceased; deceased's affection was to his daughter, who has nothing by codicil of 6th July. Richard Cradock, while he lived, was intended to be deceased's executor; deceased deaf and bedridden. Jodrell on 6th July, said, he was just come from Islington, and deceased's brother was dead, and somebody must act for deceased; Henry Balchen was his agent; the servants were solicitous to have mourning for Cradock, and were told Jodrell would give them mourning. Jodrell by Pen, asked her to make a codicil; deceased said, "No;" Elizabeth Balchen desired Jodrell to stay till Henry Balchen came, but he would not stay. Hannah Pen has signed codicil of 6th July, but Elizabeth Balchen who was present would not sign it. Codicil twice or thrice read, yet deceased took no notice of the mistake of her brother's christian name,

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who is called William instead of Richard. Jodrell is called her nephew, he is not so. Pen says, she told Jodrell deceased's brother's name was William; they have pleaded several recognitions of codicil 6th July. Pen swears deceased declared to several persons on 6th July, that she had made a codicil; their witnesses swear that the deceased could not write her name without assistance. We have forty exhibits to shew she did write her name within two years and a half before her death. Pen swears she does not believe the signing to codicil 10th and codicil 11th July were wrote by deceased; proved by three witnesses she wrote them right. Before deceased died, Jodrell sent his clerks and turned Martha and Elizabeth Balchen out of deceased's house, and took possession of every thing. Our codicil was prepared without deceased's orders, but she readily approved it, and executed it, and deceased being informed of codicil 6th July, was very angry.

*Dr. Simpson*, same side. — We oppose as next of kin, and till they have established codicil of the 6th July, they cannot oppose codicil 10th July; the proof of our codicil destroys the credit of their witnesses. Jodrell never saw deceased from April 1745 to 7th June 1748. Richard Cradock was alive when Jodrell told her he was dead, and the codicil of the 6th July was made on the supposition that he was dead. Roberts and Matthias swear Elizabeth Balchen was out of the room the whole time the codicil of 6th July was executing; Pen swears the contrary. Jodrell's agents, before deceased was dead, took away the will of 4th April, 1745. We admit that the codicil of the 10th July was car-

ried to the deceased ready prepared, but full proof of intention, reading and execution of it. Deceased after 10th July, thanked God she had discovered Jodrell's imposition.

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*Dr. Bettesworth*, same side.—Affection to Mrs. Crop proved by two indifferent witnesses; by will only 100*l.* given to Jodrell for his trouble in deceased's affairs.

*Witnesses for Jodrell.*

1. Elizabeth Perry ex. 17th April 1749.—Deponent, servant to deceased nine years, ending ten years ago last October; towards latter part of said time, Miss Cradock used to visit deceased, and she was well received by deceased; Miss Cradock married Jodrell; deceased much pleased; Crop, Banner, and Cradock, niece and nephews to deceased; does not remember Crop visited deceased above three times; never heard deceased express affection for any of them; deceased's husband died in August 1742.

2. Ann Jeyes.—Deponent servant to deceased for a year-and-half, ending nine years ago; deceased much approved of her niece Cradock's marriage to Jodrell, was godmother to their daughter; never knew Crop visit deceased; never heard deceased express regard for her niece or nephews.

3. Elizabeth Steele ex. February 1748.—Deponent was servant to deceased for three years, ending about seven years ago; deponent often saw deceased till she was bedridden; Jodrell and his wife, related before marriage, were married with deceased's approbation; the deceased showed great affection to Mrs. Jodrell, and she and her husband were frequently with the deceased, and well



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received by her ; she pressed them to come often ; deceased scarcely visited any of her relations but her niece Jodrell ; Crop came once or twice to deceased ; deceased went to Mrs. Jodrell's labour, and staid till midnight, which she never did before as deponent knows of ; deceased was godmother to said child, was much pleased at her being called Sarah after her name, and said she should be hers ; never shewed any affection for Crop, Banner, or Cradock ; expressed dissatisfaction to Crop, said she would never be satisfied with money ; has known deceased refuse to see Crop ; declared she never would call to see her ; she received Banner, and invited him to dine with her ; heard her say Banner had been an imprudent man ; when deceased's husband died Jodrell assisted her in settling his affairs, and deceased was well pleased with it, and expressed obligation to him ; has heard deceased say her brother should enjoy what she had as long as he lived, but after his death none but her niece Jodrell and her daughter should enjoy what she had.

14, 15. Int. Deceased confined to her bed three years before her death ; respondent saw her but once after ; she was very deaf ; she wrote a bad hand, but never knew her set her mark.

4. Thomas Jefferys.—Deponent, servant to deceased's husband at his death, and four years before ; deceased approved her niece's marriage to Jodrell ; Mrs. Jodrell often visited deceased ; believes deceased had great value for her and her husband ; never knew deceased visit Crop ; Jodrell had a daughter, deceased was godmother, and was at Mrs. Jodrell's labour ; has known Crop often come to visit deceased, but deceased saw her but once ; deceased declared dislike to

Sheldon Cradock; Banner failed; deceased said it was his own fault; Mr. Jodrell came frequently to deceased and assisted in her affairs; heard her say her nephew Jodrell was very kind in assisting her.

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16. Int. Mrs. Jodrell was living when respondent left deceased's service.

5. Giles Watkins ex. April 1749. — Deponent servant to deceased in 1742, and lived with her two years; Jodrell and his wife came often to deceased, she shewed great affection to her niece; never visited Crop; does not remember Crop came to deceased; Jodrell transacted business for deceased.

6. Mary Hardy ex. March 1748; — Servant to deceased a year and four months from September 1742; Jodrell and his wife frequently visited deceased, and she expressed great regard for them; said she should always value him next to her brother; deceased seemed fond of Jodrell's daughter; Crop came once to deceased, but deceased used to decline seeing her, though she was well enough to have seen her; deceased shewed disregard to Crop, Banner, and Cradock.

14. Int. Deceased bedridden three years before her death, and was deaf.

7. Elizabeth Thomas. — Deponent servant to deceased eleven months ending in February 1746; Crop, Cradock, and Banner, did not visit deceased while deponent lived with her; has heard deceased speak affectionately of Jodrell's daughter.

2. Int. Mr. Balchen paid deponent her wages when she left deceased. 14. Int. Deceased very deaf and bedridden. 16. Int. Mrs. Jodrell dead; does not know Mrs. Jodrell visited deceased.

8. Ann Webb. — Deponent servant to Mrs.

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Sheldon and to Mrs. Jodrell before and after she married Jodrell; married in 1740; frequently dined with deceased, &c.; deceased seemed to have great affection for Mrs. Jodrell, she often carried her daughter to deceased, and deceased often desired her to come to her.

16. Int. Mrs. Jodrell died 12th March 1745; Mr. Jodrell afterwards continued to visit deceased.

9. Samuel Horner.—Deponent, coachman to Jodrell when he married Miss Cradock; deceased well pleased with said marriage; deceased god-mother to Jodrell's child; often sent messages that she should be glad to see Mrs. Jodrell's daughter, and she was often sent to deceased.

15. Int. Jodrell several times went to deceased after the death of his wife.

10. James Bond.—Deponent servant to Jodrell from 2d April 1745 to 2d April 1748; Mrs. Jodrell Jodrell died in March 1745; Mr. Jodrell frequently sent messages to deceased; one day he sent deponent with a message that he would wait on her; she answered she should be very glad to see him.

11. Ann Oates ex. 1748.—Deponent servant to Jodrell last summer, about end of May or beginning of June; deponent went with Jodrell's daughter to see deceased; child was carried into deceased's room and heard deceased, as deponent took it to be, speak kindly to said child; deponent was in the next room, and did not see deceased, but heard the person deponent took to be deceased, say to said child "Miss, tell your father I desire to see him," and bid Pen tell deponent the same, which message Pen delivered to deponent, and said that her lady desired if Miss

Balchen should say when he came, that she was asleep, he would stay till she was awake.

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12. Edith Medcalf ex. 1749.—Deponent is servant to Jodrell; latter end of June 1748 deponent went with Miss Jodrell to deceased and the child was kindly received; Pen told deponent that deceased desired deponent would tell Jodrell she should be very glad to see him as soon as he could conveniently come.

13. William Tefiser, gent. — Deponent clerk to Jodrell; speaks to visiting messages, &c. between deceased and Jodrell.

14. Samuel Medley ex. January 1748.—Deponent was coachman to deceased to her death on 12th October 1748; on which day before deceased was dead deponent and the rest of the servants were turned out of doors by Mrs. Crop, Mr. Cradock, and Mr. Balchen; deceased expressed affection for Mrs. Jodrell for twelve years before her death; deceased hardly visited any of her relations but Mrs. Jodrell; deceased fond of her god-daughter; shewed no affection to her other relations; did not visit Crop for at least twelve years before her death; deceased angry because deponent drove her on the side of Fenchurch-street on which Crop lived; deceased declined seeing Crop when she would have come to her; has heard deceased say Crop was a court lady and loved plays, &c.; has not seen Crop at deceased's for several years before 16th July last; Banner sometimes visited deceased till he failed, but seldom came afterwards; never heard of his being there till one Sunday after Richard Cradock's death when he came privately thither; he sent letters to deceased; deponent gave her one and she said she should return it as it came,

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and expressed displeasure at him, and said he should never have anything to do with her fortune; deceased very angry with him for spending other people's money with which he was entrusted; Sheldon Cradock was not with deceased for above a year before July 1748; has often heard deceased say Jodrell was a very honest man, and a kind relation to her in settling her husband's affairs; she spoke many handsome things of him, and said, if her brother did otherwise than well, she knew what she had to do, for she should always acknowledge Mr. Jodrell's kindness, and would not be ungrateful; believes Jodrell assisted deceased in her husband's affairs, and she said he would not take any thing for his trouble; she saw no visitors but her brother, Jodrell and his wife, and Mrs. Perry; Jodrell and his wife often dined with her; when Mrs. Jodrell died deceased thanked God the child was alive, and that should be all the same to her; deceased's brother died 6th July 1748, he had declined in his health some months before, and lodged at Islington; deceased at date of her will had no brother but Richard Cradock, by William in the codicil was meant Richard.

2. Int. Respondent was carried before Lord Mayor and was forced out of deceased's house; was not examined before Lord Mayor, and was refused admittance into deceased's house by Mr. Cotton. 4. Int. About twelve at noon of 6th July, Cradock was dead, as deponent was told at his lodgings, but was not told at what hour he died.

15. Hannah Pen, *et. 38*, ex. 22d Dec. 1748.—Deponent was servant to deceased for four years before her death; never heard deceased express

regard for Crop, Banner, or Cradock; heard deceased frequently express dislike of Crop, and say, she was a proud good-for-nothing woman; deponent never knew her visit deceased till 16th July 1748; Elizabeth Balchen desired Crop would come that day, which she did; deponent was present when Balchen told deceased Crop was in the house; deceased said she would not see her, she had nothing to do with her, she had made Mr. Jodrell her executor, and several times spoke to that effect; deceased of sound mind, &c. Balchen said to deponent, "You have declared you would not leave the room for any body but Mrs. Crop, she is now come and must speak with Mrs. Boulter, and you must leave the room," and then deponent went out of the bedchamber; never knew Banner visited deceased but three or four times; she expressed a dislike of him; he came on 10th July 1748, with Cotton, and Martha and Elizabeth Balchen; told deceased Banner was in the house; deceased refused to see him, and said she should not alter her will, she had done as much for him as she would do, she had nothing to say to him, she had made Jodrell her executor; Martha Balchen then pressed deceased to see him; said he was come an hundred miles on purpose; at last deceased consented; he came into her bedchamber; he bid deponent retire out of the room, deponent refused; Martha Balchen then pushed deponent to turn her out of the room; deponent said to deceased, "Will you have me go out of the room? if you would I will go, otherwise not;" deceased replied, "Yes, Pen, go, he says he has but one word to say, and will not be troublesome:" deponent went into the passage and Cotton pushed deponent before him into another room at some dis-

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tance, and then shut the door and sat down on a stool with his back against it, and kept deponent in said room near half an hour, deceased afterwards told deponent that Banner and Elizabeth Balchen wanted her to give them all she had, but she would never alter her will, and added, "You know, Pen, I have made Jodrell my whole and sole executor in the room of my brother." Banner never came to see deceased afterwards; in May or June, 1747, Sheldon Cradock came several times to deceased's house, but she refused to see him, but he two or three times forced himself into her room, and told deceased he wished her dead and in heaven; she expressed dislike to him; he never came again till July or August 1748, and he then went abruptly into deceased's room; deceased told him she had made her will and should do no more for him, and desired him to go, her brother shewed deceased a letter from Cradock, at which she was angry, and said, she would never trust her affairs but with her brother or Jodrell; deceased shewed great regard for Jodrell, and his wife, and child; she expressed great sorrow for death of Mrs. Jodrell, and said her daughter should be the same to her; a little after Mrs. Jodrell's death, Elizabeth Balchen told deceased Mr. Jodrell had been there, but she told him deceased could not see him, deceased replied, "Why did you tell him so?" she answered, "Because you have said you will see none but your brother;" she answered, "But I would have seen Jodrell;" in May or June 1748, deceased bid Jodrell's daughter tell him she should be glad to see him, and bid deponent tell Jodrell's servant Mr. Cradock was not well, she would have Jodrell call on him, and she should be glad to see Jodrell; deponent delivered the message; de-

ceased often said, Jodrell was very useful to her on her husband's death, and added, "He will know I have a regard for him by my will;" when her brother was ill, deceased said to deponent, if her brother should die, she would make no other executor but Jodrell; has several times told deponent when she heard Cradock was dead or dying, to send for Jodrell to come to her. and often said she would make Jodrell executor if her brother died; 7th June 1748, Jodrell came to deceased, she expressed great satisfaction at seeing him, and said to him, "My dear Jodrell, I am glad to see you, no friend in the world I shall be so glad to see as you, I have wanted to see you a great while;" bid him sit on the bed by her, told him how ill her brother was; afraid she should lose him, but if he died before her, she would put no one in his place but Jodrell, and that she would make him her sole executor, in room of her brother, and desired him if her brother died, to come to her immediately; Catherine Roberts during such time was frequently in the room; after Jodrell was gone said day, she expressed herself greatly pleased at his having been there, and now said, "If any thing happens to my brother he would be ready to assist, and if her brother died before her, she would put Jodrell in his place;" she was of sound mind. Richard Cradock died 6th July; between 7th June and 6th July, she declared to most of her servants she would put Jodrell in her brother's place; on 6th July 1748, Jodrell came to deceased, she saw him immediately, and he told her of her brother's death; she took Jodrell by the hand, and said "Dear Mr. Jodrell, I will put you in the place of my brother, to manage all my affairs, and will make you executor of my will;" deponent remem-

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bers part of his answer, viz., that he had no paper : deceased said, " Pen will help you to pen, ink, and paper ;" deponent fetched them, and deceased then again said to him, she would make him her whole and sole executor in every thing, in the room of her brother ; Jodrell asked her if she would have any alteration made in any other part of her will, she replied, No, she would leave it all to him, her sole executor, in the room of her brother ; Jodrell then wrote the codicil of 6th July, and Elizabeth Balchen, who was in and out of the room while Jodrell was writing it, said to him, " Sir, you ought not to do this till my uncle, Henry Balchen, or some of Mrs. Boulter's relations are present : " Jodrell replied, " Miss, I will leave it till the afternoon then, and come and dine here, and your uncle, or any of Mrs. Boulter's relations may come and see it ; " and he left the codicil on the table, and went to deceased to take his leave of her, deceased asked where was he going ? had he wrote it ? deponent told her he was going to his chambers, he would come again to dinner ; deceased said she would have it, and sign it directly before he went out of the room ; Jodrell then read said codicil distinctly to deceased, and asked her if it was to her mind, she replied, Yes, it was every thing to her liking ; Jodrell read it twice or thrice to deceased, and she each time declared her liking of it ; deponent and Jodrell asked Elizabeth Balchen to see deceased sign said codicil, but she refused ; deceased said she was so weak she could not well sign her name, but she would set her mark, which would be the same, she then set her mark in presence of deponent and Jodrell, and deceased bid deponent witness said codicil ; deponent said to her, " Do you know you have made Mr. Jodrell

your sole executor, in the room of your brother?" she said "Yes;" deponent hesitated about signing it, and deceased said, "Pen, I insist on your signing it:" deponent then witnessed it in deceased's presence; deceased of sound mind; deceased delivered codicil to Jodrell, and bid him take care of it, and said, "You see I am in a very weak condition, I have no friend but you, I desire you will come and dine here every day," he said he would come or send every day; after said codicil was executed, on 6th July, deceased declared to Henry Balchen, Joseph Bradney, Elizabeth Balchen, Catherine Roberts, Ann Matthias, John Caldicot, and deponent, that she had made a codicil, and appointed Jodrell executor, in the room of her brother, and particularly Henry Balchen bid deponent ask deceased in his presence, if she knew she had made Jodrell executor? she replied, "Yes:" deponent asked her if she would make Mr. Balchen executor? she replied, "No, she had made Jodrell executor, she had nothing to do with Balchen;" Jodrell visited deceased every day, except the 10th, from the 6th to the 14th July; deceased at all said times, expressed pleasure at seeing him. By William Cradock in the codicil, is meant Richard Cradock; deponent at the time of Jodrell's writing the codicil, told him by mistake that Mr. Cradock's name was William, he asking deponent what his name was.

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4. Int. 6th July, Jodrell came before dinner. 7. Int. Did not hear Jodrell say, somebody must act in her affairs in her brother's stead. 10. Int. Miss Balchen refused to be a witness; Jodrell desired Miss Balchen to read codicil to deceased. 11. Int. Jodrell came again, and dined at deceased's with Mr. Balchen and Mr. Long. 12. Int.

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Deceased desired deponent not to leave deceased, for she was beset. Martha Balchen came and staid at deceased's. 13. Int. Jodrell had been an hour with deceased before the codicil was signed; deceased heard the codicil read; she had not taken anything the night before to compose her. 15. Int. Deceased used to set her name to writings in her brother's time; never knew her set her mark before 6th July.



16. John Caldicot, examined Jan. 1748.—Deponent footman to deceased almost four years before her death; on 16th July, Crop sent message that she would come that evening; Miss Balchen desired she would come immediately, which she did; has heard deceased speak disrespectfully of Sheldon Cradock; heard deceased say her brother was her executor, and if he died she would make Jodrell executor, for he was always very kind to her; deceased shewed regard to Jodrell, and his wife and family; heard deceased say she should set her niece Jodrell next to her brother; deceased sent deponent often to enquire after Mrs. Jodrell in her illness; on her death said the child should be the same to her as the mother. Jodrell often sent messages to deceased; often came, but believes he did not see deceased; two or three days after, 7th June, deceased ordered deponent always to let her see Jodrell when he came, for she said, "I have found that he has been here several times, and Miss Balchen has not let me know it;" and she then said, if any thing happened to her brother, she had desired Jodrell to come to her immediately, and she intended to make him executor in her brother's room, and bid deponent tell the cook the said orders. Jodrell's daughter often came to see deceased, and

was kindly received. On evening of 7th June, heard deceased say Mr. Jodrell was a very kind relation of her's, she had always a great value for him, he shewed her more kindness, and took more notice of her on the death of her husband, than any relation she had ; though her niece was dead, there was a child living who was her god-daughter, and if any thing happened to her brother, she should make Jodrell her executor in the room of her brother. A few day's after, 7th June, heard deceased ask Pen if she had let deceased's brother know Jodrell had been to see her, &c. ; deceased seemed much concerned at her brother's illness. On 6th June, 1748, Jodrell came to deceased's ; deponent acquainted Miss Balchen, she came down to Jodrell, and soon after told deponent Cradock was dead, and bid deponent go to her uncle's, Mr. Henry Balchen, and tell him Mr. Jodrell was there, and would be glad to speak with him ; deponent went to Balchen's house ; he was not at home ; deponent went after him to a coffee-house ; did not find him ; left word to come to deceased's ; deponent went home, and found Jodrell and Balchen together, Jodrell had then a paper in his hand, and he went to deceased's bedside, and said to her, " Madam, will you have any body made executor with me ; Roberts, the housemaid, and deponent stood at the door-way ; deceased replied, " She had made him sole executor, and to fulfil the will that was made to her brother ;" and Jodrell then said, " You will not please to have any one else, she said, " No, because I will have no dispute ;" Jodrell went away. Deceased of sound mind, &c. ; after he was gone, deceased ordered deponent to get things ready, for Jodrell was to dine there. A

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week after, 6th July, heard deponent say she was glad she had signed what she had to Jodrell; he came every day, except the 10th, from the 6th to the 14th July.

4. Int. It was after twelve when Jodrell came to deceased on 6th July. 14. Int. Deceased deaf, but not more so than usual on 6th July. 16. Int. Never heard what hour Cradock died.

17. Catherine Roberts. — Day deceased died deponent and the rest of the servants were turned out of deceased's house by Crop and Mr. Balchen; heard deceased say, if her brother died, Jodrell was her only friend; she designed him to be her executor in his room; 7th June, Jodrell very kindly received by deceased; deponent attended at tea; she spoke to him of her brother's illness, and said he was her only friend if she lost her brother; heard deceased say he was a very kind relation to her; between 7th June and 6th July, several times heard deceased express great kindness for Jodrell, and say he had been her very good friend, and if her brother died he should be next to him; Jodrell was with deceased on 6th July; deponent present that day; after he was gone, when deceased told Mr. Bradney, in presence of deponent and Pen, that she had made Mr. Jodrell her executor, and no one else, Bradney said, "Have you made Mr. Jodrell sole executor, and no one else?" she replied, "Yes, to avoid disputes;" and several times afterwards deponent heard her declare she had made Jodrell her executor; does not know deceased took any medicine the night before 6th July to make her sleep; she was perfectly sensible that day.

18. Ann Matthias. — Deponent was cook to deceased at her death, but was turned out by

Crop with the rest of the servants ; before she was dead, Crop came to see deceased on 16th July ; deceased said she would not see her, but deceased did afterwards see her ; deceased expressed dislike to Sheldon Cradock ; received Jodrell and his wife and daughter kindly ; expressed concern for Mrs. Jodrell's death ; said her child was alive, and that would be the same ; heard deceased bid the child tell her father she should be glad to see him, but cannot say when ; has heard her say Jodrell was next to her brother to her ; heard her say Jodrell had assisted her very much on her husband's death, and said if her brother died, she would put Jodrell in her will instead of her brother ; Jodrell was with deceased on 7th June, 1748 ; two or three days after, deceased bid deponent, if Jodrell came at any time, to let him in, for she would see him, but Betsy would hinder him from seeing her if she could, but she should be glad to see him often ; between 7th June and 6th July, she heard deceased two or three times say, if her brother died, she should put Jodrell in her will in his stead, and make him in every respect as her brother ; Jodrell was at deceased's on 6th July, but deponent was not up stairs while he was there ; deponent sat up with deceased on the night of 6th July, and deceased declared she had signed a codicil, and made Jodrell her executor the same as her brother was before, and nobody else ; deponent sat up with deceased on night of 10th July ; deceased then said to Mrs. Pen, " I wonder you will go out of the room ; Banner brought a paper here to sign, but I will never do it ; he has spent his own fortune, he shall not have mine to spend ; I have made Jodrell sole executor, in

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place of my brother ; I will sign papers for none of them ;" Jodrell came to deceased for several days after.

15. Int. Proves deceased could write her name.

Read will 4th April, 1745, and codicil 6th July, 1745.

*Witnesses for Crop.*

1. Elizabeth Balchen. — Deponent related to deceased, and lived with her six years before her death ; deponent present on 10th July with deponent's mother, Martha, and Mr. Banner ; deceased in better health said day than for some days before ; Banner desired deponent to ask deceased divers questions ; deponent asked her if she remembered she had signed a paper to Mr. Jodrell ; answered, " Yes, but she did not know what she had signed ;" asked if she designed to make Jodrell executor, &c. ; said she intended no such thing ; deponent asked her if she intended to leave to Jodrell from her relations what she had given to her brother ; she said, " No, I never intended any such thing ;" Banner then pulled out codicil pleaded by Crop ; deponent read it all over to deceased ; Banner asked her if she understood and liked said codicil ; she said, " Very well ;" then Banner read it again to deceased, and asked her again if it was to her liking ; she said it was ; deceased then set her name to it, and then deponent and Martha Balchen attested it, and deceased then said she was very glad she had lived to be made sensible how Mr. Jodrell had used her, that she did not think he would have used her so ; she was well pleased with what she had then done, perfectly sensible and well knew what she did. On 11th July, 1748,

deceased told deponent she would give deponent's mother and other relations legacies for mourning, &c. ; bid deponent send for Henry Balchen to do it ; afterwards said she would give deponent 100*l*. more. Mr. Balchen came in the evening, and deponent gave him instructions for that purpose ; Mr. Cumberland was there, and he wrote said codicil, and it was read to deceased in presence of deponent and deponent's mother, George Cumberland, Mrs. Pen, and Henry Balchen, and deceased then set her name to it, and it was then attested ; deceased of sound mind, &c. ; June was wrote in the date by mistake.

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1. Int. Deponent is a legatee in the will in 100*l*. and twenty guineas. 2. Int. Deponent has received her legacies in will and codicil. 3. Int. Deponent executed réleases.

2. Martha Balchen. — Deponent intimate with deceased six or seven years before her death ; deceased desired Banner to come up on 10th July ; he asked her how she did, she said, " Very ill, but I am glad to see you ; " deceased ordered Pen to go out of the room, which she did ; agrees with Elizabeth Balchen as to the questions and answers put to her about Jodrell's codicil ; deposes to reading codicil 10th July twice to deceased, and her approving and signing it, and she published and declared it by saying, " She was glad she had lived to sign that codicil to Mr. Banner," and then they, viz. deponent and her daughter attested it ; deceased of sound mind ; agrees with Elizabeth Balchen as to the second codicil, made 11th July, but dated 11th June ; Cumberland wrote it ; Balchen read it to deceased, and she approved it and signed it in the presence of Mrs. Cotton,



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Henry and Elizabeth Balchen, Cumberland, and deponent.

3. Henry Balchen. — Deponent received deceased's rents, and managed her affairs; 11th July, deponent being sent for, went to deceased, who said to deponent, "I have not done enough for Elizabeth Balchen, I will give her another 100%." and then mentioned several legacies, from which orders, deponent directed Cumberland to write said codicil; on 11th July, deponent read it to deceased, she said, "It was very well," and deceased signed it, and Cumberland attested it; deceased of sound mind, and said she hoped she had set every thing to rights now; deceased expressed herself pleased, and said, "Could you think Mr. Jodrell could have used me so ill;" and she said the same several times afterwards; deponent understood her to mean Jodrell's codicil, though she did not mention it; she signed it worse than she usually wrote.

4. George Cumberland. — Deponent well knew deceased; proves the transactions about codicil 11th July, same as the other witnesses; says he dated it June by mistake for July; deceased was supported by Pen to sign it; deceased wrote slow, but mentioned the letters of her name; sound mind; expressed her approbation very sensibly; mentions the same persons as present as Henry Balchen does.

*Witnesses for Crop on another allegation.*

5. Elizabeth Moore. — Richard Cradock died at deponent's house, in Islington, between four and five in the afternoon of 6th July, 1748, as she best remembers, and believes the hour to have been after dinner, about two o'clock; deponent went

into Cradock's room, and then Carter went down to dinner, and after Carter had dined, deponent saw him alive, and some time after deponent was told he was dead.

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6. Ann Carter.—Cradock died on 6th July, in the afternoon; deponent and Wilson were in the room when he died, and it was then between four and five in the afternoon; Wilson looked then at the clock, and said it was a quarter past four."

7. Richard Davis, gent.—In afternoon of 6th July, 1748, deponent went to see Cradock, and his nurse then told deponent he was dead, and had been so about an hour, and it was then about five o'clock.

8. Henry Balchen.—Cradock died 6th July, between four and five in the afternoon, as Horne, his laundress, told deponent about one at noon of same day; deponent told by Elizabeth Balchen that Jodrell had been at deceased's, and said, Cradock was dead, and had told deceased, she must empower somebody to act for her; deponent went to Crop's, and sent her servant Smith to Islington, to inquire if Cradock was dead. Smith came back between four and five o'clock, and said Cradock was not dead, for he heard him groan. On 6th July, 1748, deponent was at deceased's, when Long and Jodrell were there. Long asked Jodrell what he had been doing; he said deceased had been very kind to him, and pulled a paper out of his pocket, but it was not read, as deponent best remembers. Long asked for a copy, Jodrell told him he would see him the next day, and give him a copy; next day, Jodrell desired deponent to excuse him to Long, for he could not see him that day, but

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he would wait on him the next day; deceased often very deaf; deponent did not see deceased on 6th July, as he remembers; deponent has often seen deceased write, and never knew her set her mark to any writing. On 11th July, deceased said to deponent, "Cousin, did you think Jodrell would have served me so?" 4th Oct. 1748, deceased signed two warrants to empower deponent to receive two dividends, and she then said, "Could you have thought Jodrell could have served me so?" Deponent received deceased's money, and transacted her affairs for her; deponent has seen Mr. Banner and Mr. Cradock visit deceased when they were in town, and deponent saw Mrs. Crop at deceased's house, two or three times after deceased's husband died; has heard deceased express herself very kindly of Banner, particularly said Lady Blunt had not done so well by Banner as she should, but she hoped she should make him amends. William Cradock, Mrs. Jodrell's father, died many years since.

9. Thomas Smith. — Deponent servant to Mrs. Crop; in summer 1748 Balchen sent deponent to Islington; the message was in writing; does not remember what it was; deponent went about the middle of the day; does not remember the answer; when deponent was at the door of Cradock's lodgings he heard a groan or two.

1. Int. Mrs. Crop returned to town on 16th July 1748. 3. Int. Does not know whether Cradock was alive or dead when deponent was at his lodgings. 5. Int. Two or three days after Cradock's death, Long, Balchen and Haughton met at Crop's, and deponent carried them pen, ink, and paper. 6. Int. Deponent told Pen of such meeting at Crop's. 8. Int. Deponent never knew

Crop go to deceased till after Cradock's death.  
 9. Int. It was commonly talked at Crop's, that  
 codicil, 10th July, was made by Haughton at said  
 meeting at Crop's.

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10. Elizabeth Cumberland *alias* Balchen. —  
 Deceased eighty-three at her death; deponent  
 well knew Richard Cradock; he died 6th July  
 1748, between four and five in the afternoon, as  
 deponent believes; about eleven in the forenoon  
 of 5th July 1748, Jodrell came to deceased's; de-  
 ponent went to him; he asked how deceased did;  
 deponent told him she did not expect deceased to  
 live an hour; Jodrell told deponent Cradock was  
 dead, and said he was just come from Islington,  
 and said somebody must now act for deceased, and  
 proposed acquainting deceased with her brother's  
 death; deponent said she would send for Henry  
 Balchen; Pen came and asked Jodrell to walk  
 up, and he went to deceased's bedside; deponent  
 asked him to stay till Balchen came; he replied  
 "No; two may surprise her;" he went up, and  
 deponent with him; deceased told him she was  
 very ill; Jodrell told her of Cradock's death, and  
 said somebody must manage for her, and offered  
 his service, and asked her if she could sign her  
 name; Pen repeated to her what he said, for de-  
 ceased could not hear him; deceased replied,  
 "No, Pen, I can do nothing;" Jodrell asked if she  
 could make her mark; deceased answered "No,  
 Pen, I can do nothing;" Jodrell asked deponent  
 for pen, ink, and paper, deponent refused, but  
 Pen fetched him some; Jodrell went to a chest of  
 drawers, and, in great hurry, wrote something;  
 deponent very uneasy at seeing him write, and  
 desired he would stay till her uncle came; he bid  
 deponent not to be frightened, it would bring no

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trouble to her ; he was only putting himself in the place of Mr. Cradock ; deponent said that he was then going to deprive deceased's relations ; Jodrell carried said paper to deceased, and desired deponent to make deceased hear him ; and gave said paper to deponent ; deponent began reading to deceased, and after deponent had read about a line, deceased pushed said paper away, and said " Betsy, I can hear nothing ;" deponent then gave the paper to Jodrell, and did not go out of the chamber, and Jodrell and Pen came from the bedside, and Jodrell said something, purporting to know whether deponent could witness said paper ; deponent said " No ;" deponent did not see deceased sign said paper, and is sure it was not read over to deceased ; deponent was in said chamber during all said time ; Jodrell said to Pen, " You will sign ; Miss Balchen is a relation, I won't ask her ;" Pen readily signed it ; Jodrell put said paper in his pocket, and went away directly, and said he would dine there, and then shew it to deponent's uncle ; deponent was not once out of the chamber while Jodrell was there ; Jodrell was not in said chamber quite half an hour ; is certain deceased gave no instructions for making or writing said paper, nor was it read over to her, except the beginning, which deponent read till deceased stopt her ; deceased so weak at that time that she believes she had not strength enough to have given instructions ; deceased very deaf and ill, and between the Sunday and Wednesday, 5th July, she took two sleeping draughts which made her very drowsy, and was more deaf than usual ; never knew deceased set her mark to any writings ; believes Jodrell was but once to see deceased for two years before 6th July, and the servants would not own

he had been there ; but deceased told deponent next day he had been there on 10th July ; Banner came in the evening, and desired to see deceased ; deponent and he went to deceased ; he asked her how she did ; she said " Very ill, but very glad to see him ;" Banner desired Pen to go out of the room, but she refused, and deceased bid her go out, and she went ; deceased was deafish, but not so deaf as on 6th July ; deponent asked deceased by desire of Banner, if she intended to make Jodrell executor in her brother's stead ; she said " No ;" asked, did she intend to give Jodrell what she had left to her brother ; she said " No ;" when Banner went away deceased kissed him, and said " God bless you, and all that belongs to you ;" deceased expressed much surprize at being told the contents of Jodrell's codicil ; deceased several times said she never intended to make Jodrell executor, or to leave him what she left to her brother, particularly on 11th July ; Jodrell was two or three times after at deceased's house, and asked if deceased would see his daughter, she refused ; deceased received Crop very kindly on 16th July, 1748, and expressed regard for her, and desired she would come often to see her ; Crop came again on 17th July, and deceased received her kindly ; on 18th July, deceased asked, " Has Jodrell been here to-day ?" Pen said, " Yes." Martha Balchen then said, " Did you make Jodrell your executor," she said, " No, I never did," Pen replied, " Yes Madam, you did make him your executor," deceased with great anger said, " No Pen, I never did any such thing, it is a great lie ; did Jodrell think I would leave my fortune from my own relations ? I did not think Jodrell had been so bad a

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principled man;" she spoke with warmth; deceased likewise said she had made all right with Mr. Banner; on 20th July Crop was with deceased, and the servants were called up, and deceased said to them, viz., Pen, Roberts, Matthias, and Caldicot, the coachman being absent, if Jodrell came to her house, to tell him she would not see him, he had used her ill, and she would never see him again; Jodrell never saw deceased afterwards, as deponent believes; she also said to them, she would have them mind Mrs. Crop, for she was to manage for her; believes deceased had good affection for Crop; Cradock and Banner never knew deceased refused to see them, the said Cradock and Banner, when she was able; Crop did not visit her, but messages passed between them; deceased sent her compliments by deponent when Crop's daughter married Long.

13. Martha Balchen.—Deceased very deaf and very ill on 6th July; has often seen deceased write her name; never knew her set her mark to any writing; deponent was with deceased on 10th July 1748, when Banner came, and Pen said, if he offered to come up she would send for a constable; deponent by deceased's order desired Banner to come up; he came up and asked deceased how she did, she said, "Very ill, but very glad to see you;" Banner bid Pen go out of the room, she refused, and deceased then bid her go, and she went; Banner then bid Elizabeth Balchen to ask deceased if she had made Jodrell her executor; deposes the same as Elizabeth to these questions and answers; deceased expressed great affection at that time to Banner, and she then signed codicil of 10th July; deponent staid at de-

ceased's house from 6th July to her death ; Jodrell after 6th July came several times, but deceased received him very ill, and refused to see his daughter ; deceased received Crop very kindly on 16th July, and she offered to serve deceased in any thing she could ; Crop came several times after and deceased received her well ; deceased told Pen she must mind Mrs. Crop, for Jodrell had nothing to do with her affairs ; on 16th July, deceased said to Crop, " Lord ! niece, how do you think Jodrell would have served me ? he wanted me to give what my father got from my relations ; I did not think he was so bad a man ;" deceased frequently railed at him for what he did ; on 18th July 1748 deceased asked if Jodrell had been there ; Pen said " Yes, and he will come every day ;" deponent said, " Madam, did you make Jodrell executor ?" deceased said, " No," Pen answered, " Yes, madam, you did ;" deceased replied, " Pen, it is a great lie, I have not made Jodrell executor ;" deposes the same as Elizabeth Balchen ; deceased expressed great resentment against Jodrell ; gives same account as Elizabeth of deceased's orders on 20th July, not to let Jodrell in to see her.

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14. Martha Redman. — Deponent well knew deceased once saw Banner at deceased's ; she often spoke of him with kindness to deponent ; said to deponent she was sorry Lady Blunt had not done better by him ; deceased then added, " Mr. Banner shall always find a friend in me."

15. William Roffey. — Deponent has heard deceased speak respectfully of Crop, and affectionately of Cradock and Banner.

Int. Do not remember to have seen Crop, Cradock or Banner with deceased.



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*Witnesses for Jodrell.*

1. John Addis, apothecary. — Deponent well knew Richard Cradock, he was deponent's patient; on evening of 5th July 1748, deponent was sent for by Jodrell to go to Cradock at Islington, who was very ill; deponent went that night and found him in a dying condition; deponent when he returned, told Jodrell his state; next morning about ten, deponent and Jodrell went to Cradock's lodgings; deponent went up and met the nurse, who told deponent, Cradock died between three and four o'clock that morning; deponent went into his chamber and saw him lie dead in bed, and examined him, and he was then cold; believes he had been dead some hours; deponent went down and told Jodrell Cradock was dead, it was then about eleven in the morning; Jodrell said, he would go directly to Mrs. Boulters.

2. John Romans, gent. — Deponent was clerk to Jodrell; between one and two at noon of 6th July 1748, Jodrell told deponent Cradock was dead, and bid him go to Islington to get the key of Cradock's chamber, in the Temple; Horn, Cradock's laundress, gave deponent the said key, about half an hour after two at noon.

3. William Cock. — Deponent was coachman to Jodrell; deponent drove Jodrell, and an apothecary to Islington, one day in the summer, 1748, and then heard at the door that Mr. Cradock died that morning; Jodrell then went to deceased's and was there about twelve at noon, and staid there about an hour.

4. Thomas Greaves. — Agrees exactly with the last witness; says he was footman to Jodrell, and went with him to Cradock's lodgings, on the 6th July 1748, in the morning.

5. Hannah Pen. — Deponent lived four years with deceased, and to her death; deceased had not for some months before 5th July, taken a sleeping draught, and took none on that night, and was not, on 6th July, sleepy nor more deaf than usual, and was rather better in health on 6th July; Elizabeth Balchen told deceased that Mr. Long was below, and would be glad to see her, deceased said, "No, he was never so kind to come and see me in my illness, nor his mother-in-law, and I shall not see him now," and said, "I do not want his assistance," and added, "I have made Jodrell my executor, and he will take care of my affairs;" Long never saw deceased till the day she died; believes deceased between 6th and 10th July did not give any instructions for making a will, because deceased solemnly declared she had not; deceased acquainted deponent with all her affairs of moment for three years before her death; deceased could not write her name at length without assistance, and her brother constantly guided her hand; verily believes the subscription to codicils 10th and 11th July are much better wrote than deceased could write, and that they are not her hand-writing; immediately after Banner and Cotton were gone, deponent went into deceased's room, and she seemed very much displeased with deponent for leaving the room whilst they were there, and then complained that she had never been so ill-treated in her life, and said, they (Banner and the Balchens) would have forced her to sign a paper Banner brought with him, but said she had not, nor ever would sign any thing but in favour of Jodrell, and the same night deponent and Ann Matthias sat up with her, and she several times declared she had signed

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nothing that day; 6th October 1748 deceased said to deponent and Roberts, "I have almost killed you, but Jodrell is a good natured-man, and there is a little money in the house, and he is my executor, and will make you amends for what you have done for me, for I have put him in the place of my brother in every respect."

6. Catharine Roberts.—Deceased on 6th July 1748 ordered Jodrell to come up; deponent was several times in deceased's chamber while Jodrell was with her, and is very certain Elizabeth Balchen was not in deceased's chamber during the whole time Jodrell was there, because deponent saw her in the dressing-room part of said time, and saw Jodrell go to her in said dressing-room, and heard him desire her to come into deceased's chamber; and he said they would ask her again if she would have any one joined with him; Elizabeth was in a great passion, but went into deceased's chamber with Jodrell; he staid about an hour; deceased did not rest so well as usual for some days before 6th July, but she was rather better on 6th, and less deaf; heard Elizabeth Balchen on 6th, after Jodrell was gone, ask deceased whether she would have Henry Balchen for her executor, and she said, "No." Henry seemed displeased that day; Martha Balchen came and resided at deceased's; deceased angry, and bid her begone out of her house, and said she was a wicked woman; deponent has often heard Martha say, she would not rest till she had Jodrell's codicil revoked. Long came on 6th July; deceased would not see him; Pen constantly sat up with deceased; Jodrell was at deceased's 7th, 8th and 9th July, and saw deceased, and on 10th, Banner was there, and deponent

heard him and Elizabeth and Martha Balchen press deceased to sign something; deponent was at the door of the chamber, and heard Martha say, "Pray, Madam, do set your hand to this paper; Mr. Banner is here, you have done a wrong thing, Madam, you have done a wrong thing; pray sign this, if you do not, Betsey will be badly off;" deponent heard deceased say, "I will do no more, I have done for you all." Banner and Elizabeth Balchen also pressed her very much to sign the paper; deceased said the same again to them. After 6th July, deponent heard Balchens' say to deceased, Jodrell was nothing to her, his daughter was dead, and Pen assured deceased the contrary, and that Miss was living; deceased expressed herself very angry with the Balchens, and said, if they would not be quiet she would send for Jodrell, and he should turn them out of doors; never heard of any instructions from deceased for a codicil between 6th and 10th July; deceased never without some of her servants with her; Banner and Cotton came on 10th July; heard Balchen press deceased to sign a paper; Pen and Cotton were then in another room, where Pen said Cotton confined her by force; deponent saw them come out of said room; never saw deceased write; deceased very ill on 10th and 11th July; Jodrell was at deceased's house on the 11th, 12th, 13th and 14th July, and saw deceased each time; deponent was present at one of those times, deceased was very civil to Jodrell; on 11th July deceased spoke slightly of Crop; neither Long or Haughton saw deceased between 6th and 10th July, 1748; deponent heard Crop desire deceased not to see Jodrell any more; deceased made no answer, but

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at last said, "No;" at the said time the servants were called up, and deceased said to Elizabeth Balchen, "What would you have;" tells an incoherent story of wills, and that they pressed deceased to order her servants not to let in Jodrell, and at last she agreed; does not remember Jodrell was at deceased's after 14th July; heard Balchen say deceased should not see Jodrell; 6th October 1748, deceased said she should soon die, and she hoped Mr. Jodrell would satisfy them for their care of her; but do not remember she then said he was her executor; on 12th October, deponent and the other servants were turned out by Crop, &c.

7. Ann Matthias. — Elizabeth Balchen was not all the time in deceased's room while Jodrell was on 6th July; deponent saw her in the kitchen and dressing-room, while Jodrell was there, who staid about an hour; 6th July, deceased was rather better, and less deaf than usual; deceased on that day, told her she had made a codicil, and put Jodrell in the place of her brother, and she must mind him as she did her brother; Henry Balchen was very angry at said codicil; that evening, Martha came to deceased's house, who expressed great displeasure at her coming, and bid her begone; Martha said she would not go from her till she had altered Jodrell's codicil; Pen sat up with deceased from 6th of July to her death; some of her servants were always in her room; on Friday, 8th July, deceased said she was glad she had put Jodrell in her brother's place; on the 6th and 8th July, deponent heard the Balchens very much press deceased to alter her codicil, she was angry and refused; on 10th July, at night, the Balchens pressed deceased to make a new codicil, and said

Miss Jodrell was dead; believes no instructions were given for codicil of the 10th July; believes for two years deceased could not write without having her hand guided; deceased very ill on 10th and 11th July, and believes she was not then able to write; does not believe the signatures to codicils 10th and 11th July were wrote by deceased; on night of 10th July, she bid Pen never leave her; said that Banner would have had her sign a paper, but she had signed to Jodrell, and would not to any one else; deceased refused to see Crop, when she sent a letter to say she would come; 6th October 1748, Crop was at deceased's, and the servants were then called up, and Mrs. Crop was pressing deceased to do something, and Crop ordered them to go out of the room; on 6th October, at night, deceased complained Mrs. Crop pressed her to sign to her.

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8. John Caldecot. — Says Elizabeth Balchen and Jodrell were in the dressing-room on 6th July; heard deceased then say, in presence of Balchen, that she would have no executor but Jodrell; heard Pen on 6th July tell Martha Balchen from deceased, she had no occasion for her, and desired she would go, but she said she would not; deceased on 6th July told deponent she had made Jodrell her executor, &c.; verily believes deceased did not see Long or Haughton between 6th and 10th July; on 20th July deponent and the rest of the servants were called up, and Miss Balchen talked about the will, and Crop said, “Madam, you will see Jodrell no more,” and at last she said, “No, no.”

9. Samuel Medley. — On morning of the 6th of July, about eleven o'clock, deponent was at Cradock's lodgings, and Mrs. Horne then told depo-

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nent, Cradock was dead, and that Jodrell was just gone from thence; deponent went up and saw him dead; on 6th July, the servants said deceased ordered them to regard Jodrell as they used to do her brother; Elizabeth Balchen was very earnest to receive and answer the messages from Jodrell.

10. Elizabeth Steele.—Deceased wrote a very bad hand; believes the name of deceased to codicils 10th and 11th July are not deceased's writing.

11. William Tittenser.—Says, at desire of Jodrell, he called most days in summer 1748, to inquire after deceased; Elizabeth Balchen generally answered she was better, but at the same time, the servants said she much worse.

12. George Spencer.—Deponent servant to Jodrell; on 5th July deponent went by Jodrell's order to inquire after Cradock, and deponent brought word he was very ill; Jodrell then sent for Addis.

13. John Vernon.—12th or 13th July, 1748, Jodrell sent deponent with an "How do you do" to deceased, and deponent went several times, and Balchen used to tell him deceased was so ill she could not see Jodrell.

*Witnesses for Crop.*

1. Elizabeth Cumberland *alias* Balchen.—Deponent was in deceased's room most part of 6th July; deponent did not ask deceased to make Henry Balchen executor; deponent expressed great anger at Pen for imposing on deceased in Jodrell's codicil; Henry did not express anger at any of the servants about said the codicil; deponent's mother came to deceased's house on 6th July;

deceased several times expressed satisfaction at Martha's being there; did not hear deceased give any order to her servants to treat Jodrell as they used to do Cradock, and she was not capable of giving such orders that day; never heard deceased express satisfaction at Jodrell's codicil; but on 10th July, when deponent first told her of it, she expressed great resentment; deponent did not press deceased to revoke the codicil of 6th July, but when deponent told her on 10th July, that she had made such codicil, she was much displeased with Jodrell; Pen told the Balchens she would send for Jodrell, and turn them out; this was said on 9th July; deceased then so ill and deaf that she could not hear what Pen said; deceased wrote her name without being guided; deceased on all occasions said Jodrell was a base man, for having imposed the codicil on her, and said so before most of her servants; and one day, deceased sent for her servants up, and told them she would not see Jodrell, for he had imposed on her, they must mind Mrs. Crop; deponent did not tell deceased of Jodrell's messages, because deceased could not bear his name; 6th October, 1748, deceased was not capable of making any declarations; 4th April, 1745, deceased gave deponent a duplicate of her will to lay in a chest of drawers; on 10th October, deponent saw said duplicate in the drawer sealed up, and deponent left it there and locked the drawer; about ten in the evening of 11th October, 1748, Roberts called deponent out of the dressing-room; and deponent went into deceased's chamber, and found there Mr. Vernon and Mr. Tittenser, and they had hold of Martha Balchen, and told her she must go out of the house immediately, and then one of them took

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deponent in his arms and carried her down, and said she must go out immediately, and then they and two other men turned deponent into the street; the servants were present, but none of them assisted deponent; on 12th October, 1748, the lord mayor bound over the said persons, and the deceased's servants, and Jodrell was bail for them. 14th October, 1748, deponent was present with many persons when deceased's will was read, and deponent said she had one in her keeping, but when deponent looked for it, it was gone; Mr. Balchen produced one duplicate, and Jodrell another; believes Jodrell's agents took it out of deceased's drawer on 11th October.

2. Martha Balchen. — On 6th July when deponent came to deceased she was not capable of saying any thing, but she began to mend on the 7th; never heard deceased speak in favour of Jodrell's codicil, but she expressed great dissatisfaction at it in the morning of 11th July; swears, as the former witness, that deceased never ordered deponent to go out of the house; deponent sat up with deceased on 10th July at night, and swears deceased did not declare, as Pen and Matthias have sworn; deponent, or her daughter, sat up with the deceased every night from 6th July to her death, and never heard her speak to the effect deposed to by Jodrell's witnesses; deposes to her being turned out of doors by Jodrell's order, on 11th October 1748, in same manner as Elizabeth deposed; John Caldicot opened the street door and none of the servants assisted the deponent; on 12th October the said agents and servants bound over, and Jodrell bailed them.

3. George Cumberland. — 10th October 1748, deceased's will was in her drawer; deponent fas-

tened the drawer behind with a wood screw ; gives an account of turning the Balchens out of deceased's house on 11th October 1748 ; deponent fetched Mr. Balchen, but Jodrell's agents would not let him in ; Balchen and Long came again about 12 at night, but they would not let him in ; on 12th the said persons were brought before the lord mayor, and also the deceased's servants, and Jodrell bailed them ; on 14th October 1748 deceased's will was not in the drawer where it was found on the 10th ; the writer of the will said he had made only two parts, and Balchen said the part he produced was that which Cradock had.

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4. Henry Balchen. — On 6th July deponent did not express anger at Jodrell's codicil, but said deceased was not then capable of making one ; deceased signed her name without guiding, and she so signed codicil 11th July in deponent's presence ; deceased said to deponent " Did you think Mr. Jodrell could have served me so ? " gives same account as the other witnesses of transaction on 11th October 1748, as to so much as happened after he he was sent for ; says they, on 12th, got a warrant and brought the said persons and the deceased's servants before the lord mayor ; the part of deceased's will which deponent produced was in Cradock's custody to his death, and Jodrell produced another duplicate.

1. Int. Deponent and Jodrell locked up Cradock's chambers. 2. Int. Believes said will was in Cradock's chambers when they locked them up, and Sheldon Cradock, whose chambers they were, took off the padlock without Jodrell's privity, and they found deceased's will, which deponent took and kept. 3. Int. Deponent between 6th and 10th July was with Long at Haughton's, and they

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talked of the codicil of 6th July, and deceased on being informed thereof, having declared she never intended making any such thing in favour of Jodrell, they asked Haughton what was necessary to be done in such case, and Haughton said, something should be drawn up for deceased's approbation; Respondent said, he thought it would be proper for Banner to wait on her with it, and believes codicil 10th July, was drawn by Haughton, and that Banner carried it to deceased.

*Witnesses for Jodrell.*

1. Samuel Medley. — 11th October 1748, at eight or nine in the evening, deponent went to Jodrell, and told him, Pen and Matthias said, Crop intended to seize deceased's house, and then Jodrell sent Vernon and others to secure it; on 12th October Jodrell's agents and deceased's servants were carried before the lord mayor, but the servants were not examined, and they were never admitted again into deceased's house.

2. Ann Matthias. — On 11th October, deponent heard Crop, Mrs. Banner, and Balchen talk of seizing deceased's house; deponent heard deceased say when she was dying, she would have Jodrell sent for; and so they sent to inform Jodrell thereof; on morning of 12th October, Sheldon Cradock, and others broke in and carried them before lord mayor.

3. Joseph Wilson. — Proves locking up Cradock's chambers by agreement of Balchen and Jodrell; but Sheldon Cradock and Balchen broke into the chambers, and Balchen took out duplicate of deceased's will.

4. John Romans. — Deposits the same as the last witness, in substance as to locking up Cra-

dock's chambers; Jodrell sent deponent and others to deceased's house on 11th October, when they turned the Balchens out.

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5. William Tittenser. — Speaks to same effect; says they were sent to wait till deceased's death to take care of her effects; Mrs. Balchen abused them, and they carried her and her daughter down stairs; does not know they were forced out of the house; they went next morning before lord mayor; deponent took deceased's will out of her drawer for to secure it; deponent was bound over; but the servants were dismissed.

6. John Vernon. — Same as the other witnesses, as to taking possession of deceased's house, and getting her will; the Balchens might have staid in the house if they would have been quiet.

7. John Croucher. — Deponent made deceased's will; and a duplicate one was kept by deceased, and the other by her brother; the will and duplicate, when opened, were in the same state as when sealed up.

*Witnesses for Crop.*

To prove warrants for South Sea and other dividends. Signed by deceased from 29th June 1743, to 25th June 1748.

Codicils of 10th and 11th July 1748, read.

*Dr. Hay's argument for Jodrell.* — Question whether Jodrell's codicil is proved. Codicil 10th July, is founded only on supposition that Jodrell's was an imposition. Jodrell's codicil depends on the credit of Pen, Roberts, Matthias, Caldicot, and Medley; recognitions of this codicil; the witnesses against Jodrell's codicil are, Elizabeth,

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Martha, and Henry Balchen, and if they have deposed the truth, Jodrell's codicil is a mere forgery; Pen has interest in the codicil of 11th July, and therefore swears against her interest, the Balchens swear for their interest; case must be determined upon circumstances and probabilities; capacity and execution is all that is necessary, and in some cases instructions; no doubt of capacity on 6th July; not proved that she took a sleeping draught on 5th July; direct proof of capacity by Elizabeth Balchen, for she gives account of what deceased said, which shews capacity. We pleaded that within two years of deceased's death, she never wrote her name without her brother's assistance, and they have not attempted to prove the contrary; the warrants of the 4th of October are not exhibited; execution of the codicil 5th July, proved by both the Balchens on their first examination, and also by Pen, and she is supported by Caldicot, who shews deceased knew what she did; affection material; Elizabeth Steele swears she several times heard the deceased say her brother should enjoy what she had, and afterwards her niece Jodrell, and her daughter should have it; the transaction on 6th July was open, and public; codicil 6th July read over to deceased, as appears from codicil 10th July reciting it; it was never read by Henry Balchen or Long, and they could know the contents only from Elizabeth Balchen, having heard it read to deceased by Jodrell, and this perjures Elizabeth Balchen; mistaking the name of Cradock not material; codicil 10th July, made on supposition that deceased was imposed on by Jodrell; if she was not, the last codicil drops; no intention, no instructions for codicil 10th July; we have pleaded that Cotton confined Pen in another room

while codicil 10th July was executing; they have not contradicted it; no pretence of affection from deceased to her relations.

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*Dr. Jenner*, same side. — I shall consider, first, the facts not controverted; secondly, those that are. Facts not controverted: deceased intended to die totally testate, and had affection for her niece Jodrell. Points controverted: whether she intended to benefit Jodrell, and execute codicil of 6th July; whether she revoked it; I shall enquire what are the presumptions of law arising from both species of facts. Deceased employed Jodrell to take care of her brother in his illness; to shew the deceased was capable on 6th July, Long desired to see her on that day, and she refused him; next day his wife came to visit deceased, which shews they did not think her insensible; Elizabeth Balchen was from home on 7th June, which shews deceased was not then very ill. No recognition of codicil 10th July. *Lamkin* against *Babb*(a), Prerog. 1752; they have not pleaded incapacity on 6th July; no evidence that Crop ever managed deceased's affairs or saw her after 20th July; no declaration of deceased that she had made Crop executrix.

*Dr. Smalbroke*, same side. — Banner had not been with deceased for years before 10th of July, and never saw her after; from Crop's witnesses it appears that Jodrell did acquaint the deceased with her brother's death; Elizabeth Balchen proves the identity of Jodrell's codicil; deceased never reproached Jodrell himself; for the Balchens are quite silent as to that; codicil of 6th July read over,

(a) Vide *suprà*, p. 1.

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as appears by recital in codicil 10th July, which is in the words of codicil 6th July, which could be known only by Elizabeth Balchen; Jodrell intended it should be read to deceased; Elizabeth Balchen did not say, *in recenti facto*, that Jodrell had imposed on deceased, or that the codicil had not been read; they have alleged that deceased could not sign her name, without assistance, for two years before her death, but have not proved it; our witnesses are supported by several who were not in deceased's family; the Balchens are supported by nobody, they swear the deceased said she was glad she had signed to Banner, but he is not executor.

*Dr. Paul* for Crop. — Nothing given to Jodrell's daughter, to whom it is pretended deceased had affection; we want no evidence of affection to next of kin; not contradicted that Jodrell said "somebody must act for deceased; now her brother is dead;" we do not insist that she was insensible on 6th July; Pen says she told Jodrell Cradock's name was William, therefore she gave the instructions; but one witness to support this codicil of 6th July. 1 Vern. 161, *Allam* against *Jourdan* (a), one witness against answers of a party makes no proof. Recognitions of codicil 6th July indeed proved by Pen; the maids say the subscription to codicils 10th and 11th July are not deceased's hand; Pen was animose to the Balchens. Maxim of law, *rati-habitio mandato equiparatur*, and therefore approbation will have the same effect as instructions, *Young* and *Young*, Deleg.: no instructions, the late judge of Prerog. pronounced against the will, but

(a) Vide *suprà*, p. 28.

it being attested by three witnesses, and found in deceased's custody, the Delegates held there was sufficient evidence of deceased's approbation.

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*Dr. Simpson*, same side. — No legal proof of Jodrell's codicil; there must be two unexceptionable witnesses, or supporting circumstances; codicil of 6th July unfavourable, is in prejudice of the next of kin, and for the benefit of the writer, and is supposed to be the act of a very infirm person made upon a false representation of Cradock's death; next of kin not to be disinherited without full proof; codicil of 6th July confirms the legacies given by the will to the Balchens; proved deceased never talked familiarly with her servants, which affects the declarations they have sworn to; no act of friendship done by Jodrell to deceased after the will of 1745 was made; no act of disobligation done by the relations; Pen is contradicted by Elizabeth Balchen, as to all the facts about executing the codicil of 6th July; codicil of 10th July is a revocation of Jodrell's codicil; codicil of 11th July shews deceased had a good opinion of the Balchens. Jodrell did not apply to deceased to get the codicil of 6th July recognized; if codicil of 6th July was made in the life of Cradock it cannot be supported, because if he was alive it was made upon a false representation.

*Dr. Pinfold*, same side. — Jodrell's writing the codicil creates a strong presumption against it; very odd he should not ask deceased her brother's name; Steele's evidence relates to Jodrell's child; yet she has not left her a legacy in the will of 1745, nor in codicil 6th July; improbable she should make the declarations to her servants de-



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posed to between 7th of June and 6th of July; affection to Banner proved by three witnesses; in the will the deceased leaves him 100/., and the same to Sheldon Cradock; no disobligation from Crop; Jodrell never came to deceased from 1745 to 7th of June, nor from thence to 6th of July; if we can shew Pen has forsworn herself, no credit can be given to her; and that she has forsworn herself appears from her swearing to deceased's declaration on 6th July, of recognition in the presence of witnesses, who either swear contrary or say nothing to it; Pen swears that the deceased never wrote her name from 1744 without guiding; again, as to codicil of 11th July, that the signing of it is deceased's writing, and yet it is proved Pen was present when deceased signed it; they have not denied her presence at that time; deceased very ill on 6th July, and could hardly hear; if Jodrell meant fairly he would have staid till Mr. Balchen came, who he knew was sent for at noon; he did not tell Long the contents of the codicil; no evidence to reading codicil of 6th July, but Pen; Elizabeth Balchen knew the contents of the codicil from what Jodrell told her; deceased never spoke to Jodrell as her executor in the several visits he made her after 6th July; codicil of 10th July would not have been produced, if it had not been a fair transaction; on 11th October, Jodrell got possession of deceased's house, and not only turned out the Balchens, but refused admittance to all deceased's relations.

*Dr. Bettesworth*, same side.— When her brother died, it was natural for deceased to divide her estate among her relations; all declarations in favour of Jodrell before the will are answered by it; if de-

ceased made the codicil of 6th July upon a false cause, supposing her brother to be dead, when he was not, it will destroy that codicil; clear in evidence that deceased never before set her mark; Jodrell is married to a second wife, and nothing is given to his daughter by the codicil of 6th July, and therefore all the declarations in favour of the child are proof against that codicil; there is not sufficient proof by law to establish his codicil; it does not appear when deceased was first informed of the contents of that codicil; admit that the codicil of 10th July was concerted by the relations, but it is better proved than Jodrell's; codicil of 11th July strengthens codicil of 10th July; she signed the codicils of 10th and 11th July; why then did she not sign that of 6th July? the Court may pronounce against both codicils; Mr. Balchen was administrator to Richard Cradock.

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JUDGMENT — SIR GEORGE LEE.

I pronounced against the codicils of 6th and 10th July, and pronounced for the will, &c. the codicil of the 11th July by mistake dated 11th June; I pronounced against Jodrell's codicil of 6th of July, not on account of fraud or imposition, (for I thought there was reason to believe the deceased had more regard to Jodrell than to her next of kin, and had told him on 7th June, that in case of her brother's death she would put him in his place) but because I thought there was not a sufficient legal proof to establish it, for Pen, the only direct witness to it, was so contradicted by Elizabeth Balchen, that she was not an intire witness, and some objections to her appeared from her own deposition, and I pronounced against Crop's codicil of 10th July, because it was made

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by the relations, not only without instructions from the deceased, but without her privity, and had nothing to support it but the evidence of Martha and Elizabeth Balchen as to deceased's approving and executing it, and they were so much contradicted by the other witnesses, as well with respect to that transaction, as with respect to other particulars in their depositions, that I could not give entire credit to them; I pronounced for the will of 4th April 1745, because both sides agreed it was a good and valid act of deceased's. As to the codicil of 11th July, I was not at all satisfied with it, and thought it rather the act of the Balchens than of deceased, but as there were four witnesses who proved that deceased gave instructions for it, approved and executed it, and was in her senses, I thought myself bound by law to pronounce for it. I therefore gave sentence by interlocutory for the will of 4th April 1745, and for the codicil of 11th July 1748, and against the codicils of 6th and 10th July 1748, and pronounced the deceased to have died intestate as to the residue, and without making an executor.

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Appealed, but the sentence was afterwards affirmed by consent in the Delegates. (a)

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**Caveat Day,  
March 15.**

**LOVETT *against* HARKNESS.**

The executor of a latter will put upon proof by the executor of a former will. Latter will established — no costs.

Darby Cochland, deceased. Will, dated 2nd January, 1752. Robert Harkness, sole executor; Probate granted in common form, called

(a) On the 4th March 1754. The Judges Delegates present at the sentence were — Mr. Justice Wright, Dr. Walker, and Dr. Arthur Collier.

in by Lovett, executor of a former will dated in May, 1749. Harkness propounded the last will.

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*Witnesses for him.*

Benjamin Hill.—Deceased said he had no relations. Deponent wrote the will of January, 1752, from instructions by the deceased; deponent read it to the deceased, he approved, executed it, and published it, and was of sound mind.

*Note.*—Harkness admitted Lovett to be a contradictor, and did not pray the first will to be brought in.

JUDGMENT—SIR GEORGE LEE.

Sentence for the last will, but without costs, because Lovett had not pleaded.

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BOND *against* BOND.

Caveat Day,  
March 15.

*Dr. Pinfold*, for William Bond.—John Bond died a widower, intestate, left William Bond, his son. Sarah Bond, who pretended to be the deceased's widow, appeared in the Prebendal jurisdiction of Colwich, in Staffordshire, and alleged herself to be widow of the deceased, and that he had been dead fourteen days; he died on the 5th November, 1752, and she appeared and alleged as aforesaid on the 13th November, 1752, and took administration as widow, which has been since revoked for want of jurisdiction. Caveats on both sides were entered in the Prerogative; each party prayed administration, but the son denied the widow's interest, and she confessed his. Fanshaw, as proctor for the widow, pro-

Administration contested between a son, and an asserted wife.

Administration *pendente lite*, given to the nominee of the son in preference to the nominee of the wife, because his interest was certain, and that of the wife uncertain.