moved the Court to modify said issues so as to make the same correspond in terms to the real question at issue before said Orphans Court, and to make it involve the single question whether the papers purporting to be the last will and the two codicils thereto of Thomas Crumplin deceased, are or are not the true and genuine last will and testament and codicils thereto of said Thomas Crumplin, and also to determine that the said respondents exhibiting the said instruments as such last will and codicils thereto had the affirmative of said issues and bound to prove the genuineness and legal validity of said papers and are therefore entitled to open the said case and conclude the same. But the said Court refused to grant the said application of said Counsel and every part thereof. To which said refusal the said Counsel for the said respondents excepted and prays the Court to sign this their bill of exceptions according to the form of the Statute in such case made and provided, which is accordingly done, signed and sealed this fourth day of December in the year 1832.

Chr. I. Kilgour (Seal)
J. A. McKinney (Seal)

And the said plaintiffs by their attorney aforesaid presented to the Court here their third Bill of exceptions, which being signed by the Court is in the words following, to wit.

Thomas Davis and wife vs George Calvert Adm.

Pltffs 2d Bill of exceptions

At the trial of these issues, after all the evidence on both sides had been given (reference being here had to the plaintiffs first foregoing bill of exceptions so far as necessary to explain the application of this bill of exceptions) and after the arguments and summing up of the Counsel to the Jury, as well on the part of the plaintiffs as defendants, had been concluded, the Defendants by their Counsel prayed the Court to deliver to the Jury the following series of instructions numbered from one to seven inclusive to wit.

The Counsel for the Defendants pray the Court to instruct the Jury as follows.

1st. That it is not a sufficient objection to the papers exhibited as the last will and testament and Codicils thereto of Thomas Crumplin that the Jury should believe from the evidence before them that any clause or part of the same was not the original and unprompted suggestion of the testators own mind, but was first suggested by Mr. Key or any other person. Provided the Jury shall believe from the said evidence that the testator fully comprehended said suggestions, and with a competent mind adopted them and made them his own.

2d. That before the Jury can find a verdict for the plaintiffs on the ground that the said will and codicils were obtained by fraud or

undue influence, the Jury must believe from the evidence in the cause that these particular instruments were induced by such fraud or undue influence, and that no evidence of influence at other times or in regard to other matters can be important further than as they may enable the Jury to form a judgment of the instruments submitted to their consideration in the issues joined between the parties.

3d. That before the Jury can decide against these instruments as obtained by fraud, they must be satisfied from the evidence in the case that fraud is actually proved. It is never to be presumed, or inferred without evidence.

4th. That the question whether the children named in the instrument exhibited as the last will and testament of Thomas Crumplin, were or were not the children of the said Crumplin, is not embraced within any of the issues in this cause, and that evidence to prove or disprove such paternity is not relevant to any of said issues.

5. That whether any of the devisees named in said papers purporting to be the last will and testament and Codicils thereto of the said Thomas Crumplin, have or have not a legal capacity to take under said instruments, is wholly irrelevant to the present issues or any of them.

6th. That if the Jury believe from the evidence that the testator Crumplin at the time he dictated and executed the said will and Codicils was of sound and disposing mind and memory. And also if the Jury believe from the evidence that at the times the said testator dictated and executed the said instruments that he was not controlled or governed in the making and executing the same by the fraudulent suggestions or undue influence of Caroline and George Calvert, or either of them, or by any of the devisees under the will, then they must find for the defendants on the first seven issues.

7th If the Jury shall believe from the evidence aforesaid, that the said Thomas Crumplin was induced by persuasion, request or importunity of the said Caroline or any other person to make the said last will and testament and Codicils thereto, still such persuasion, request and importunity need not impair the validity of the said instruments unless the Jury shall further believe from the said evidence that such persuasion request and importunity were fraudulent.

To the granting of which instructions or any of them the plaintiffs by their Counsel objected, but at the same time prayed the Court that if notwithstanding such objection the said instructions or any of them should be granted, that the following additional instructions as applied to each and every of the instructions so prayed by the defendants as aforesaid be given to wit.

1st. To the Defendants first prayer the plaintiffs object, but if granted, pray the following addition be made thereto to wit.

But it is for the Jury to decide from all the facts and circumstances