indeed only in favor of those that are executed; Unexecuted Papers are rejected or rejected according to the Circumstances of them, they are never pronounced agst where the Act of God alone has prevented their being carried into Execution, when the presumption is, the Testator intended it. The Case quoted by Dr Calvert is entirely to point much stronger than the present Case.

Garnet & Sellers } a man sent, who gave verbal directions wch were not
Delegates ..... } wrote down in his presence, could not be read, he drew the
Will from recollection, the Will was brought & part wrote after he died.
The Delegates did not pronounce for that Party, but so far as it went
declared it was a written, not a nuncupative Will, altho it was not
written in the presence of, or ever read over to, the Testator, the Ct de-
=clared for the Paper, because the Act of God prevented the Execution.
Mr Applins account is fair, the Instructions he verily believes he
read to the deed, because there was a real & Copyhold Estate as well as
personals. Bignell swears positively they were read over to the deed.
The next dis is wh: the Paper itself is liable to any Objection, so as to
distinguish it from others. It is contended it can't be explained. But
the Case of Watkinson & Bogley, wch began in the Consistory of Chester
is still stronger. Peter Bogley died 6 Nov: 1755. he sent for a parish Clk.
before his death to make his Will, who took his Instructions, read them
to y Decd. who approved them, but died before the Will was made in consequence of them.
It contained Devises of Landed Estates, Bequests to different Persons. &
Bogley & H. W. were appointed Exors, Resid: Legt: from Chester it was ap-
=pealed to York, where Watkinson was admitted to plead parole Evi-
=dence, & the Writer to explain that Henry Watkinson was the person
meant by H. W. & Sentence passed in favor of the Will in 3 Cts.
The present Case is not so incertain: Minutes are always taken
shortly by an Att: if taken at length it wd be a compleat Will.
Rd Griffin is very particularly described in the Beginning of y Will
The Nephew, the Place, & the Father of the Person are first named.
As to the personals, it is said, Rd can mean only the Rd Griffin
before named, & that who he is, is explained, by the reference of the
word said. He must have had Admon with the Will annexed if
there had been no Exor. It is as plain from the Paper, that he is the
Exor. Mr Applin is explicit enough as to the Appointment in the
Schedule; & from the Evidence I am clear, he wd have executed it
if he had survived, & that he was prevented by the Act of God only.
The Ct wd be cautious, if any thing appeared to shew the Intention
of the Testator was not permanent. If the Paper had been brought
the next morning & not executed, there wd have been grounds for doubting
the permanency, but no such Circumstance appears, & where the
Act of God only, intervenes to prevent the Execution, there is no
Instance, where such Defect of Execution has defeated the In-
=tention of the Testator in the Instructions, therefore I revoke the
Admon, & decree the Probate, as prayd, without Costs.

x there was even a mixture of seeming fraud.

went from thence to York, so to the Delegates

No 11 Woodward v Sanders
Altham .. Dr Harris .... Dr Wynne - Bishop.

Dr Wynne) Anne Ward, the party decd: died a Widow, (leaving many
Sanders, Widow, her Daughter, only Child, & several Grand Children) 20 Feb.
1765.. 16 Feb: a Will was obtained from her in favor of Mr Woodward, an
entire Stranger in Blood, who is therein appointed Sole Exor, & resid:
Legatee: the Will has been propounded in a common Condidit, & a
Commission granted for examon of Witnesses at Worcester, wch Bishop
alledges is not duly executed, because there are 4 subscribing Witnesses
& that Altham's party has not examined Rich: Cointe, one of them
without assigning a reason for such omission, on y return of the
Certificate, & has examined Mary Hales, who is no subscribing Witness,
Altham says Rd Cointe was not produced, we say he wd, by y common
Condidit, that Bishop is entitled to examine him on Interrog:
It may be said, the pty propounding, may produce whom he pleases

2. Qr pty propounding a Will to produce all y subscribing Witnesses?

Subscribing Wit not examind: if Deft may examine him on Interrog:

But this will not avail, when a deed is subscribed, because it is not
the party producing, but he who made the paper, any party interested
controverting it may insist on the Evidence of all the subscribing parties
at Common Law, I am informed, if there are 10 Witnesses to a Bond, such
Bond can't be put in Suit as to the Penalty, unless all the Witnesses are
produced to examined, or a reason assigned why they are not.
Dr Harris) This is a new case, no Pltf before, has pointed out to his
Opponent what Witnesses he shall examine, other Witnesses, besides
the subscribing are often examined; it is too early to say we have not
produced sufficient Evidence: suppose the Witness was tampered with
it wd be hard on us to be obliged to produce him. They may pro-
=duce & examine him in chief, wch is better than on Interrog: The case
at common Law is not ascertaind, & may not be true. I hope you
will not oblige us to produce this Witness, to examine the other three.
Dr Hay. Judge) Every Party may produce whom he pleases, & the other
party ought not to direct him, Different in the Case of Instrumentary
Witnesses, of great consequence, wh: the Opponent may examine Witnesses
on Interrog: if they are not produced & examined by the other Pty. The
Case is entirely new. The Pltf will not produce all Witness, saying the Deft
may plead, Deft declines pleading, but wd discover the Truth by Inter-
=rog: I wish to know how the practice stands, wh: a Defendant may examine
a Witness on Interrog: whom the Pltf will not produce.
(Tyndal, Kings Proctor said) There are Instances, where a Witness has
been produced, & not examined by the Pltf: on wch the Deft has prayd leave
to examine such Witness on Interrog: & been allowd so to do. There is
no Case wherein a Party has been obliged to produce a Witness, or wherein, if not
produced, he has examined that Witness upon Interrog:.
Every party may call what Witnesses he pleases: the other shd not tell him, who
he is to produce; but tho, this is generally true, yet the reasoning may be
different as to instrumentary Witnesses, who appear to have attested: the
Questions now are wh: the party producing the Paper, shall not produce all
the Witnesses appearing on the face of it, & wh: the other Party, (upon his not
producing them) may not examine them on Interrog: in general the Subscrib:
Witnesses are all produced, here one is omitted: the Pltf will not produce a
Witness, saying that the Deft may plead & produce him himself in Chief:
this the Deft declines, but wd discover the Truth from Interrog: It is a
point of great consequence, the Case is new, & I wish to know what has
been the Practice: If it agreable to Practice not to produce the Witnesses
subscribing, as such involuntary, & may not the Opposer of a Will
examine him upon Interrog: tho, not produced by the Party propound:
it: I believe at Common Law, the subscribing Witnesses to an Instrument
must be produced, if the factum is disputed: If the same Evidence can
be obtained by examining the Witness upon Interrog: I do not think it
reasonable to burthen the party proponent with the superfluous
expence of producing him; I wd not debar the Opposer of y Benefit
of examining a common Witness, nor is it reasonable to oblige the
Propounder to produce a Witness, who perhaps has been tampered with
I see inconveniences both ways, so shall take time to the Bye Day.

Sentence deferd to the Bye Day....

See Sentence Fol. 24
See Fol. 112. On admission of an Allon

Dr Harris

Sentence deferd

Judge. Dr Hay

What has determd what Witnesses shall be published. In Case of a common Bond, the parties may choose who they will examine altho' in case of subscribd Witnesses