the Transaction they several times expressed great Uneasiness least Mr & the Husband, or Jos: Butler, the Brother of Decd or any of her Relations, shd come in before the Execution, so, this design be defeated. 14. Art. That the Difference in y Legacy is . . . . . is very small. 15 Art: The Legacy is given by y Name of.

Dr Harris . . . I am Council for Mess.rs Davis & Robinson, Parties to y Deed of Separation, Persons greatly confided in by the Deed, & Exors in both Wills. i.e. 1 Oct: & 3 Nov: 1764. there is reason to think this is calculated to put the Exors to expence & to protract the Cause; Mr Benn Agent for Joseph Butler the Intervener did not attend to be examined, till he had undergone a monition, to shew Cause why he shd not be excommunicated for non Appearance to be examined? The Allon with which the Intervener is now before you, consists of 2 Parts, the one propounding the Will of Oct.r the other combating ours of Nov.r I am sure you will cut off all possibility of delay, after so much already, I hope you will reject the whole; I dont mean to oppose it as improperly drawn, but as improper to be given at all. There is, I think, in general a Mischief attends the opposeing an Allon; it is apprizeing Parties of the weak parts of their Cause, it affords them an Opportunity of strengthening them & of amending their Plea: Let us proceed first, on the Validity of our Will of Nov.r & if you are of opinion not to reject the whole, I hope you will confine the Allon to those Articles wch controvert the Will of Nov.r for if they cannot destroy that, what signifies their proving the former Will, wch must depend on the validity of the latter. As to the latter Articles, the Husband is concerned in opposeing our Will, more than the Intervener; his Proctor aserted he wd give an Allon, yet has not, tho't wont allow Altham & Bishop to plead the same matter; in the Case of Millar & Shepherd it was not suffered to be done. To be sure Allons may be given by several Parties, if they plead different matter, but in the present Case, it is scarce possible they should; we admit, Altham may plead everything agt the Husband, but we confess the former Will to be Hannah Clouds: If this Allon is agt the Husband, the matters contained in the 4th & following Articles relat.g to the latter Will is irrelevant. We admit Altham may be a contradictor to our Will, in wch Case, what is pleaded in Support of y Will of Oct.r 1764 shd be rejected as quite immaterial; at all Events Bishop shd be assigned a precise time to plead, that he may not keep the Exors before the Ct when Altham desires; It wd be hard the Exors shd wait the issue of the contest between Bishop & Altham about the former Will.

Dr Burnell . . . Tho Sir, there may be many Articles of the Allon very exceptionable, yet as Dr Harris has waved any particular Objections, It wd not become me to make them; I think, with the Dr, the whole Proceeding has been calculated for Delay; Benn the Attorney of the Intervener, was on the Point of being excommunicated, before he wd attend to be examined, & just before his Examon, comes in & makes an Affid.t that Ja: Ewer ab.t Aug.t 1768 left at Deponents, the annexed Copy of H.C.'s Will, & on 26 Sep.r 1768. Sep.t shewd it to B. Hills, who said it was a true Copy of the original draft of H.C.'s Will executed 1 Oct.r 1764, the original Draft of which, was in his & his Partners, Ja: Ewer's Custody; on this Affid.t of his hav.g seen a draft in Ewers hands, H.A.L. were ordered to bring it in. When Bishop wd have pleaded had he not feared Costs, Altham intervene, & asserted he wd give an Allon, whereupon Bishop waved his Peton, knowing Altham wd plead, what he shd have pleaded, & that he shd have y Benefit of Althams Evidence on the Merits, without being liable to Costs. The present Allon not only propounds the former Will of Oct.r 1764 but affects the Validity of the last Will, of Nov.r One Will is sufficient to be pleaded, if either is proved, there is an End of the Husbands Interest: this manner of pleading tends only to increase Expence, Delay, therefore ought to be rejected. I must observe the Intervener is possessed of £2000 wch shd be the property of the Exors, under the Deed of Separation, wch may account for his intervening; if he was the only Opposer & pleaded the special matter, he now does, agt the latter Will, tho't would restrain him, unless he thereby subjected himself to Costs.

Dr Marriott . . . urged that the Allon pleaded a Draft of a Will unattested, wch was not a compliance with the Condition of the Indenture, & the bad Consequences of allowing such Draft to be set up.

Dr Wynn . . . I am Council too for the Exors of Fr Clouds. H.C. his Wife died Nov: 14: 1764 soon after D. & R. took Probate as Exors, of a Will, said to have been executed Nov.r 3: 1764. Citation issued agt them to bring in the Probate, & prove by Witnesses, or shew cause why it shd not be declared void, & Admon granted to J.C. the Husband. 2 Sep. H.T. Fountain appeared for the Parties cited. 4 Sep. F. brought in y Probate & an Affid.t of Scripts. Caveat Day Bishop alledged Fs Affidavit not full. 1 Sep. E.T. Bishop opposed the Will. Fountain propounded it, & asserted he gave an Allon on admission y 3 Sep: when F. brought in a fuller Affidavit of Scripts, & was assigned to hear on y Admission next. 4 Sep. Fs Allon & Exhibit was admitted & Decree for Answers ordered. 2 Sep. M.T. Altham intervened for J.B. & brought in an Affid.t of Tho's Benn that there was the draft of a former Will in the Custody of B.H. & J.E. on wch a Monition was decreed agt them, as the Possessors of an Original Draft of a Will, of y Deed, of a former Date, to bring in y same on Oath. 8 Jan: 1766. F. brought in the Affid.t of J.E. with the original Draft affd, & the Cause was assigned for Sentence. 1 Sep. Hil.T. Bishop alledged his Client to be dead. 2 Sep. Monion was decreed agt his legal Representatives. 4 Sep. B. appeared for Edw: Beily & Jn Welling 2 of J.C.'s Exors, & F. was assigned to declare, wh.r he wd propound the Draft. he declared he wd not, on the Bye Day. Altham then propounded it, & he & B. each asserted to give he gave an Allon on admission the 4 Sep: when B. waved his Allon till he had seen Althams, upon whose Admission we are now before you wch you will reject if it can appear from y manner of pleading, that the Point aimed at cant be established, & that if the Draft cd be established, it cd not have the Effect contended for; wch is to defeat the Husband of that Right, wch prima facie, by Law he is entitled to, the Admon of his Wifes Effects, the foundation of the whole is the Benefit accruing to H.C. by her Brother Wm Butler's death, reserved to her by Indre; But that Indenture, restrains her to the Exercise of her right in a certain manner; it must be disposed of by her Deed or Will, attested by 3 Wn from this very Plea there is no executed Paper, in consequence of those Powers reserved, wch must be strictly complied with: A Case may be put so, that an unexecuted Draft of a Will, whose Contents are well proved, as well as the fact of its being destroyd, may be established, provided too that the Execution of such destroyed Will can be proved; This however proceeds on the Supposition that those Points can be established, & the proof of Destruction must be beyond Doubt: in the manner they have pleaded, there can scarce be any Proof of the Contents; those who proved the Execution wd not prove the Contents & so vice versa, & indeed in a Case of this nature a Witness ought to prove both; If then there does not appear a probability of establishing this Paper, you will not admit it; they are different Parties who set up the Wills; what wd expedite the Interest of the Party giving this Allon, wd impede that of the others; the Ct will take care they shd all give Allons in time; if you admit the Allon I hope it will be taken together, that we may all proceed together.

Dr Calvert . . . as to the Objection to our pleading the first Will, that they are ready to confess it; this Proposal might be right, & make it superfluous for us to plead the first Will, if they were the only Parties, we had a Contest with, but we have the Husband to contend with likewise: we have a Right to come in; we are called upon by the Citation with Intimation due to an interest &c to come in, we are in time in any State of the Cause before Sentence; the Plea we have given tends rather to shorten, than to delay: Benn underwent an Examon: his affid.t is very clear, as to the fact of the Existence of such Will; however, let his Conduct be ever so culpable, it is not chargeable on my Parties; a Party may intervene, beyond dispute, in any State of the Cause, when it shall be for his Interest. Mr Butler was advised, that this was the proper time: as to the Objection of an Impossibility of Proof, we must wait till y Merits to judge of that. It has been said, this is only a Draft of a Will, that cant be a Material Objection, for Drafts under peculiar Circumstances have pronounced for: Say they, it must be proved positively by Witnesses; we have laid it positively to have been destroyd; the presumption then is, on y face of the Plea, that we shall be able positively to prove the Destruction. It is said