Dr Hay. Judge... Mrs Shurt is the Person who applies for a Representative, she does not specify to whom she wishes it shd be granted; the Consideration therefore is. who is the most proper Person? I will grant the Admon to that Person who is most likely to answer the Ends of the Person who claims; Mr Hervey is in England, Mrs Shurt can apply to this Ct, if he does wrong; I shd defeat the End & Intent of her Prayer, if I granted it to the Attorney of the Representative of A. I therefore decree Admon de Bonis of A. to Mr Ashton Hervey who being on the Spot can best answer the End proposed by praying the Admon . . .

Prerogative.

July 5

No 91

H. Stevens Junr. — Altham. — Collins

Sir Francis Gostling & Pyle v. Walsh & Abel.

Drs Clarke & Calvert — Drs Harris & Bever. — Drs Marriot & Wynne

Dr Clarke..... In Walsh died 15 Jany 1766, leaving his Brother Samuel Walsh, his only next of Kin; the Father of the Sam. W. left an Annuity of £160 in Trust for Samuel Walsh; on the Death of the Testator many Testamentary Papers, were found, in Different Bureaus, wch are all of his own Handwriting. A dated 20 May 1738. & a Codicil 31 Octr 1738. B. a Will signed by the Deed but not attested 2 Augt 1758. C. Codicil 16 April 1762. not signed or attested. D part of an unfinished Draft without Date or Signature E a minute of a Draft of a Legacy to Jane & Margaret Wood as in B. F another unfinished part of a Transcript, neither dated nor signed G a Codicil dated 8 Sept 1764. signed by the Deed, & is wrote on the Back of the Paper B. & begins thus "Codicil to the Will" as none of these Papers have been executed in the Presence of Witnesses, the Question is wh: any, & wch of these Testamentary Schedules canbe supported?

In B & C. wch are the most finished are many Variations, particularly in the Directions about carrying on his Trade, of a Music Printer; I will recite a few Particulars. In B. there is a Legacy of 50£ to the Charity School of St Mary le Strand, if the Bth agree to erect & rail in a Tomb Stone for him. In C. there is no such Condition - In C. there is an Annuity clear of all Taxes - In B. An Annuity of 50£ to his Cozen & 500£ Legacy, not specifying from what fund it shall proceed & be paid. In C. he gives the Interest of 500£ 3 pCt Ann to Mrs Keith & farther to his Exors Sir Francis Gostling & Jn Pyle their Heirs Assigns &c the Interest of £2000 consolidated 3 pCents, during the Life of his Cozen Mary Keith; a Considerable Legacy to John Abel, his Servant in Paper C. There are so many Obliterations & Interlineations, as to induce a Doubt wh: any or which was intended by the Deed to operate as his Will or Codicils - Jane & Mrs Wood 1000£ at 22. if married with Consent of the Exors 4000£. desires that his dear Friends Gostling & Pyle. will be Exors & Guardians to his dear Brother Samuel Walsh & the Children Jane & Mary Wood for wch he leaves them 500 apiece & 50£ Annuity during the Lives of his Brother & the Girls to see they are properly taken Care of - In B. as well as C. there is the same legacy of 500£ & the Annuity of 50£ is limited, till J & M. W. attain the Age of 21. & during his Brothers Life - There are Legacies in C. not mentioned in B. Note E & F. are not propounded - Stevens for the Exors prayd Probate of the Paper B & G as a Codicil endorsed - In C. the Deed had described J & M. W. as placed at Mrs Prices at Lisam Green, but that is struck out & Bustard & Kensington inserted; the reason of opening this is, Mr Altham to shew how late the Deed had this Paper C in Contemplation, gave an Action, pleading when J & M. W. were removed from Mrs Price's, to Kensington, & Mrs Price exhibited 2 small Paper Books, wherein the Deed had made a Memorandum of what Altham has pleaded, whence it appears. J & M. W. were placed at Lisam Green 12 July 1758. & removed to Kensington 19 July 1762. Agreed for Lodging & Board at 18 G. pr Annum each ...

Witnesses have been examined who prove the Handwriting of the Books & Papers.

Dr Marriott.. I am Council for Jn Abel a legatee in Paper C. wch we propound; there is no Clause of Revocation in any of these Papers. C. is not signed at Bottom but begins, "I. John Walsh &c" the Exors are named in all these Papers - Bustard & Kensington, give a Sort of fresh Date to the Paper; E. is pleaded but not propounded; we plead Abel's being Servant & living with Deed to the Time of his Death; the Wds speak to the Interlineations, to Bustard & Kensington being the Deed's Handwriting, Our Prayer is that the Exors shall be assigned to take Probate of C. together with the Paper. G. Codicil to the Will, Dated Sept 8. 1764 else to take Probate of C. with G. & B. The Ld will be as to the Intention of the Deed, & the Operation of Law on these Papers

Dr Harris..... You will find that the Papers most perfect are revoked consequentially by the Revival of another

Dr Clarke..... I am Council for the Exors. who are so named, in the several Testamentary Papers, & have laid them before the Ct. for your Opinion wch of them shd be propounded & operate; they are all preserved with equal Care, so that no Argument is necessary to induce a Presume on that account; being unexecuted, the Lands to the amount of 1200 pr Ann: go to the Heirs at Law. Some of these Papers are incertain as to Date & others as to the fluctuating Intention of the Deed; the Exors think themselves bound in Duty to propound Paper C. tho, they are not so much benefitted therein. B & G. seem to be the most perfect Dispositions: In favor of B. is the similarity of the other Papers to that, so that it is preserved in Substance; the Deed Intention seems to have been to leave the Bulk of his fortune to trip Woods if they married with the Consent of the Exors & Guardians he had named; You will keep your Eye on the Mans Intention, if it is likely to be best promoted by B & G. the Variations in C. are scarcely to be attended to; the Principal, are 2000 to Dr Randall, Wm Randall, & Abel each over & above certain other Legacies - In B. he gives 4000 to J & M. W. - G Revocation of C. else it wd too much diminish the Residuum - To account for what he has done to the legacies to Randal & Abel - If the Intention is alone regarded, he meant G. to be a Codicil to B. wch he meant shd operate as a Will - The others seem a mere Inception; C. is not subscribed, abounds in Obliterations, & not to be taken for a Will, breaks off, like minutes; even if B. did not stand propped by G. you wd think these & not denote such an Animus revocandi, as wd revoke B. The Ct will be very cautious how it looks upon them as revocatory, tho, G. is not in the Cause, there is clear Proof of Deeds Intention to die testate. G. must revive B. from internal marks. G. wd appear subsequent in Intention to the other Papers. G. is not consistent with C. but with B. therefore must be referred to B. only - G is revocatory of the other Papers & reviving B. - That he had some Alterations in Contemplation I admit, but no Intention that C. shd operate, but rather serve as a minute - The Entry is no Proof that C. was in his Contemplation so as to supersede. G. When the Ct has a Difficulty to ascertain the Intention, there are fixed Rules to determine it; the Will of a Testator is ambulatory, he may by one Act revoke & by a subsequent Act revive, it is immaterial whether such Revocation is in express Terms, provided it is in Substance; if C. is revoked by G. B. is revived; at any rate G. is, beyond doubt, to be accepted as the last Will, if the other Papers are thought consistent therewith, the Exors are ready to take Probate of them likewise . . (Paradox)

Dr Calvert... Mr Walsh having made so many dispositions, it cant be presumed he intended to die intestate; Nothing appears, to shew, he ever departed from the Purport of the last Paper G. the Question is therefore, not wh: any, but which Papers shall be established? the Exors are indifferent, so they receive the Directions of the Ct, but they think B & G. are the Papers wch ought to be pronounced for; a Schedule, on the face of it, not only, does not revoke, but will not convey the Estate; in some Cases the Act of God & unforeseen