Accidents may prevent the Execution, but that is not the Case here; if Papers are kept by the Testator, some time, & not executed, it must be presumed, he never intended they shd operate. White & White a Will was made in 1747. 10 Feb. 1748 the Testator made a Codicil wch was wrote by ye Testor signed, & not attested. in March 1749. he died; the last Will was set up as a Revocation of the former, but the Ct declared in favor of the first Will, because the Testator had sufficient time to execute the latter, & omitted so to do. Baker & . . . . . a Will was executed in 1756. another was made but not . . . . . in 1757. Ld Sd. Simpson pronounced in favor of the first, the last having been long enough in the Deed Custody to execute it, if he meant so to do. Duke of Somerset & Sir Jacob. The Will was made 1685. the Testator died 1722. 3 Testamentary Schedules were propounded of a Subsequent Date, the Delegates affirmed the Will & rejected the Schedules.

Prerogative determd by Sir Geo. Lee. 1748

Decr by Lord: Simpson 1759

Delegates 1725 . . .

C. then cd not revoke B. but if it could, the Will of the Testator being ambulatory, B. might be revived by a Codicil. 2. Bit so in Yorkshire Case? A mere Declaration is not sufficient to revoke, if so, it cant revive without an Act; here is an Indorsement in writing. What Paper cd the Words apply to, but that he was then writing on? the Contents apply better to one Paper than the other; It is a Repetition of the Legacy of 1762, it is an Addition to the Will of 1758: if the Testator intended the Paper written in 1762, shd stand he wd not have repeated the Legacy mentioned therein; if he wished the Paper of 58. shd operate, he wd add it. Sericold & Munster v Heming an Indorsement was construed as a revocation of the 2d Will & a Revival of the first. then the Reference of being paid by my Exors abovementioned, was thought too strong. it is not exactly so here, because the Exors are also named in the Codicil, so might stand consistently with the Will of 1758. It will apply agt an Intestacy. He must have the Schedules in Contemplation; the Alteration dont apply to the Time, it was in June 1764. the Paper G. is in Sept. 1764. Considering the two Papers, it does not follow he intended they shd stand.

Dr Marriott . . . You will consider the Devises, as enlarged to the same Devises as in B. the Exors the same, they may be consolidated or stand single; G. is a Paper endorsed; consider the Man writing on loose Sheets, he takes the first; he does not say this Will; It being wrote on this or that Paper makes no difference; it must be a Codicil to the legal Will. there was a permanent Intention in the Testator to establish C. The Testator reconfirmed Paper C. at some part of the time when Ye M.W. were at Bustards School, the last Receipt is so late as 1766. As to Revocations & Cases, they have some particular Circumstances attending them; if they are not only Alterations, not Revocations, it is very natural to consolidate the Papers; the Law is loose as to the Establishment of Testamentary Papers, strict as to Land; as a Commercial Nation we are at large, but your Discretion is governed by Law: A Will may be good as a Revocation, not as a Will of Lands. Ld Anglesey's Case where there were 2 Wills of the same Date, a Codicil referred to one. Here are no Blanks left for the Witnesses, the Presumption is the Testator did not intend it shd operate as his Will, from his not complying with the legal Forms; Here are no Contradictions; what enlarges does not contradict; the Principle of the Case is to be the Guide; If it is considered as a Will having Exors, it wd revoke B. In the Roman Law there were different Ideas of the Heirs; it is not so with us, we have the Admor with the Will annexed; Heires honorarius; if it was not the Testators Intention to revoke, possibly all may stand, but I contend C. may stand . . .

H. of Lords . . . . . .

Dr Wynn . . . This is a very particular Case; the Decd's Intention was clearly to add to his Brothers Legacy; he was considering for a number of years, how he shd distribute his Estate; this is one of the most favorable Sort of Testamentary Papers, in support of wch, you will aid us, as much as you can consistent with the Rules of Law: I wd enquire what the Law admits to be a Will to convey personal Estate, & how it is applicable to the present Case; No Mode, No Solemnity is required, quocunque modo velit; this is the Law of the Land. Papers not signed, have been pronounced for, it is not requisite to be subscribed at Bottom, for Land, see 3 Devins . . . . it is said there are many Obliterations, those which cant be made. Sense of Will be set aside, but will not void the rest of the Will; where Obliterations have occurred, the Ct of Chancery has referred them to a Master to report de

1 Peer Wms 421 . . . Masters v Masters. is infinitely stronger, there was not a Word but might be legible, the Testator has made a perfect & consistent Disposition of his Effects; he has taken B. for his Model, there are conditional Legacies in B. they are pure & simple in C. If C. had stood by itself, under these Circumstances it might have been pronounced for: the next I wish the other Papers will make any Difference; they are as perfect as B. & being later, will revoke it. Ld Langdowns Case, he made a Codicil mentioning a former Will. Noys Abr: 1618. prior to the Statute of Frauds. the Ecl. legal Acts are not done; the Republication was necessary to make it a Subsisting Will. there is nothing to shew the Decd intended the Codicil wrote on Paper B. shd be connected with it. The Paper C. was full; there was no reason for writing it on B. only. the Alteration in the name of the School, shews, he had the Paper C. in his Contemplation, within a few Months of B. wh. be fore or after, indeed, dont appear: the Ct may suspect he may have made the Alteration even subsequent to G. If C. & G. are taken together, every Intention of the Decd, will be carried into Execution; my Client will be benefitted in the manner you have reason to think the Decd intended.

Lucas. 96

Dr Harris . . . I hope you will think the Decd did not carry his Intention into Execution: it is immaterial wh. he did, or did not know 3 Ws. were necessary for the Devising real Estate; it is to be presumed he did know; his fathers Will was before him, attested by 3 Ws. he copied all the Common form from thence; taking it for granted, he knew this, he may then be supposed to have wrote, B. & signed it, without any Intention it shd enure as a Will. This immaterial wh. signed at top or bottom. C. is as good as B. Exors are therein named, it is signed, & new Legatees are added, it revokes B. & thereby shews the Testators Inconstancy; C is as perfect as B. but the Testator did not intend it shd operate 'till it was attested. If a Person will depart a Paper executed as, & does not give the Will a proper force the whole is void; the Ct cannot tell what that Person wd have done, if he had known, he cd not leave his Estate by an unexecuted Will. G. is liable to the same Objections; he wd have taken care to have attested it, if he had intended it shd enure as his Will; there is therefore a presumption he intended to depart from what he had begun, provided he knew the forms must be complyd with, if not, it is void on account of the Uncertainty.

Dr Bever . . . The Great variety of Papers shew Mr Walsh intended to make a Will, but from the Particular Circumstances of the Papers before the Ct, it may fairly be presumed he did not intend any of these shd operate as such; he was encumbered with Riches; there are several Persons Legatees, who do not appear to be related to the Decd; these Papers are all so uncertain, that I cannot give a preference to any of them; B especially, appears revoked by C. however it is obliterated the Decd appears to have bestowed most Pains on that Paper. Dr Calverts Argument (from the Cases he cited) agt C, as long possessed, by the Testator, or lain by, holds agt all the Papers, it is very different from the Cases where the Testator is suddenly taken off.