when the Deed was taken ill at his house at Putney, when being asked, if he had made a Will, replied he had a Plan of a Will by him at his house at London & was very uneasy he had not executed it, & then burst into a Flood of Tears. He died 13 Decr without executing his Will, wch was found safely locked up at his House in London; these Facts were first laid before the Ct by Affidavit, & afterwards by direction of the Ct reduced into a Plea, wch the Ct rejected, having heard Counsel, declaring, if all the Facts pleaded, were proved, it wd not be a sufficient foundation for him to pronounce, for the Validity of the Draft propounded, as the last Will of Mr Freeks. the Action Execution having been so long unaccounted for. . . . . .

Hurt v Dixon & Medley. Prerog. 26. Feb. 1762. a Plea propounding unexecuted Papers was rejected, as not pleading facts, from wch legal Proof could be collected, so as enable them to operate as a Will. .

Dr Burrell . . . In all imperfect unexecuted Papers, where any Space of Time intervenes between the Time of their writing & the Death of the Party, the Ct before it pronounces for them, will expect a satisfactory Cause to be assigned for their remaining so long in the State of Imperfection; as the Deeds Sudden Death, &c otherwise the Ct will presume the Party departed from his Intention & did not mean to give them force & Validity, & therefore omitted to compleat what he had began. Imperfect Papers are allways looked upon with an unfavorable Eye, & tho, they have been in many Cases pronounced for, yet Strong Proof of Permaneney of Intention, in the Deed has always been required. By their own Plea the Deed in the present Case did not die till 30 March 1767, & they say he told Bucknall, the latter End of Septr or in October, that he had made his Will, so that there was 6 Months elapsed from the time of writing the Paper in question, to the death of the Party, Duke of Somerset, Sir John Jacob. The Will was made in 1685. the Testor died 1722. 3 Testamentary Schedules were propounded of a subsequent date; The Delegates affirmed the Will & rejected the Schedules. . . . .

Prerog: 1748 G. Lee, White v White. A Codicil wrote & signed by the Testator, but not attested, was set up to revoke a Will of a former Date. Sir Geo Lee declared in favor of the former Will, because The Testator had sufficient time to execute the latter & omitted so to do.

Ibid . . 1759 P. Simpson. Baker v Butler an unexecuted Paper, dated 1757 was set up to revoke a former Will executed 1756. Sir Edw. Simpson pronounced for the first Will, the last had been long enough in Deed's Custody to execute it if he meant so to do.

Ibid. 25. H.T. 1763 P. Simpson. Long v More. Mr Gideon died leaving a Will date April 7. 1760. after his death, a Testamentary Paper was found all of Deed's hand writing, amongst Papers of moment, the exact time of its being wrote was not mentioned, but Deed within 3 Weeks of his death repeatedly declared to Mr Woodcock, his Intention to alter his Will agreable to this Paper. W. advised him, to put the Alterations in writing, from whence Instructions might be drawn for a new Will; Mr G. did so, & appointed some day in Septr for W. to meet him & draw up the Instructions for this writing, the Meeting was afterwards postponed, on account of a large Estate G. had then contracted for. 17 Octr Mr G. was taken ill, told Dr Watson, who attended him "I am very uneasy, my Affairs are not settled, I wish, I c: see Woodcock," who was sent for immediately, but Mr G. died before he came. Sir Edw. Simpson allowed there were proofs, that Mr G. intended to alter his Will, but none that he continued in that Intention to his death, if there had been sufficient proof of the Permaneney of that Intention in deed, I might have pronounced for it, in y present Circumstances, I must decree against it. .

Dr Marriot . . A Person may be determined as to the disposal of his Property, tho, he may doubt whom he shall intrust, with the fullfilling his Intention; They allow that if by Circumstances, the Intention can come out, the Action is admissible; the Will may be established as far as such Intention appears to be compleat

Stevens & Stevens. The Decd died before Execution, there were Blanks left, yet the Will was established.

Ld Coke says, where a Will is imperfect, it shd be good pro tanto

Brown. Heath & Pocklington, the Ct said, tho, more was intended, it was good for what was mentioned, the Disposition as far as it went, was valid –

Butler & Baker was to revoke an executed Will, wch is very different from the present Case.

Treves & Treves. The Decd declared he wd consider of it; he had deferred executing the Will when the man came, wch distinguishes it from the present Case

If we know a fact, we plead it generally, as we may, & on a general Plea Particulars come out; here the Papers appear subsequent to a cancelled Will: It was proper to plead he did not think himself in danger when he made the Declarations.

Dr Harris . . . . We plead that the Deed wrote this, with an Intention it shd serve for a Will, & would have finished, but died from home, & as it were suddenly. We say he took great Care of this Paper, that he in consequence of having wrote this, cancelled a former Will; the Drs called for recent Declarations; there may be what they wish; you wont presume a Revocation; it is finished, it is compleat; you may establish it pro Tanto; no body can say, what Evidence can be brought the Witnesses speak to Declarations, we dont plead them, I should suppose Dr Dynn mistaken, in the Case of Treves & Treves, it is so extraordinary.

Dr Hay Judge . . . . Nobody can say what will come out in proof on this Action; it is true, unexecuted Papers must be supported, by Proof of the Deed's Intention, made out by Circumstances, from Presumption, or positive Proof he intended to make a Will; they plead an Intent to make his Will, & that he declared he had made it, about the latter end of Septr 1766; he is taken ill in March 1769, recovered, thought he was well, relapsed, & died a Day after; This may be the Case of a man dyeing suddenly on a Journey, wch makes it a special Case; nothing yet appears, from whence I can collect, he had any regard to this Paper if it shd come out when the Interlineations were made, it wd be material to guide me; it may come out, that he made them, just before he went his Journey, therefore it is too early for me to pronounce on the validity of this Paper; I must admit the Action, to let them shew it was not a neglected Paper, but a subsisting one in the mind of the Deed; The Case of Treves & Treves, as stated, is very strong, to reject the Action, But besides it being to be distinguished from the present, by the Deed saying he wd consider of it, wch are words importing Doubt, he also said, he had a Plan of a Will by him, so it must have been looked on by the Ct, as implying he had no Will, a Plan of a Will, & a Will being very different,

Plea admitted . . I have no doubt of admitting this Plea, so let the Case be made out; the Paper is compleat, as far as it relates to personal Estate except the omission of appointing an Executor. . . .