It is objected that this cant stand as a Substantive Paper, if it could, the Declarations would destroy it – the Mem: were intended only for his private use – He gives a very good reason for benefiting her extraordinarily. It was nothing but a mere mode of speaking: her Title must be the Codicil he had made, for he had received the Interest, tho, he calls it "my Lady's Bond." If a Person left 1000l Bank Stock, & had sold 400l it wd be only a Revocation pro Tanto, so here tho, in 1760, 900l was remaining yet in 1765. there was only 600l. A man may make Codicils on as many Papers as he pleases; the Ct will do what it can, to carry them into Execution: Codicils do buoy up, & will swim, as many as can be: they are often kept secret: this is of all Testamentary Dispositions, the most favorable Case; it is a pious Gift: his Declarations of having left her 1000l is conclusive; the Variety of Inks, shews them wrote at various times. . . . . .

Dr Harris . . . We dont dispute the words signifying Mrs Gilbert; but the Qu: is, wh: he gave this Bond by a Testamentary Codicil, or Testamentary Schedule? It is first a Question of Fact, & then of Law. "It contains the Copy of my Will, in the large middle Drawer. May. 3. 1760." It is not impossible he might make a Copy in 1760 of a Will made in 1754. He transcribed it between 1754 & 1755. he had a mind to alter it, but could not immediately, so made a Codicil in 1755 wch he executed, & copied in the Pocket Book in May 1760 accordg to my Idea, for fear of an Accident; by that Codicil he gives her an Addition of 50l pr An. – Both the Will of 1754 & Codicil of 1755: are copied in 1760. & I apprehend, on the 8th of Decr: 1760, he made alterations, wch you see in the Will of 1754: by transferring this Codicil into that Copy, he virtually destroys that Codicil of 1755: there is an Obliteration over the Codicil; for the Date is erazed, it is cancelled: 22 Janr: 1761. he makes the Memr as an Apology for giving her 50l pr An. more. & therefore says the Relations shd not murmur. after the entry of the Copy of the Will of 1754. & before the Entry of "the Bond for my Lady." the Words are not Testamentary – From the Endorsement of the words, "Remains 600 for my Lady." it is plain he did not consider it as testamentary but a mere memorandum only: could he have considered this as testamentary, & yet have omitted to mention it in the Memr as well as the others? he avoids calling for his Wife tho, he had a great regard for her. Mr Stewardson was here when the Witnesses were examined, they did not chuse to examine him: the declaration of a 3d Person must not be received, when that Person can be examined himself: the Deed's declaration to Mr Hall, & his Declaration to the Exors, is mentioned by them in their Answers to the Court. . . . . .

Dr Calvert . . . The Question is wh: this imperfect Schedule is to be received as Testamentary? the Rule is to enquire into the Testators Intentions: the Presumptions agt its being Testamentary, are the most violent, that can possibly be; on the face of it, the Words dont import it to be testamentary: they may be supplied, but that must be by the very strongest Circumstances: It appears material, when the words were wrote: if in 1754 the Ct &c: not pronounce for it: they may have been wrote in May 1760, when he transcribed the Draft of his Will of 1754, into the Pocket Book. In the preceeding folio are these words "Alterations made in my Will. 10 Decr: 1760. By executing his Will after, & omitting this Paper, he clearly intended it shd not operate. If this is not connected with the Memr if it is not implied in the words. it cant be taken as testamentary. the Memr refers

the Contents of

to the additional Annuity, in the Codicil of May 1765. what then are the presumptive Circumstances to support it? the Entry on the Bond is nothing: does it refer to a Will? if it is given by the Codicil, it cd not be hers, in his lifetime: it cd not refer to a Testamentary disposition, because it cd not be hers till his death: it must be with relation to a gift in his lifetime: the Words "left in the Hands of Jas: Garland" wrote after the Entry, viz. 13 July 1760 amount to a Republication, or Recognition, & the Bond is not mentioned, so that it wd destroy the Memr wrote in Jany 1761. He does not say "as another Codicil," or "a Codicil," but "as my Codicil." The Ct always enquires into the Intention of the Deed for I wont contend that several Codicils cant stand together: the Deed must not intend only to give a Bond, but to give it by his Will: his Intention to give it in his lifetime, will not be such an Intention, as the Ct can pronounce upon – Watches. Jewels. Plate. Furniture in St James: Square, a large Sum of money. You will regard the Testator's general Character as as to Carefullness, or Carelessness in his Affairs: he is exact, attentive in making his Will: he dont call her "My Lady." anywhere there he thought it necessary to take care of every Scrap of Paper, he looked upon as Testamentary; he kept them by him he duly executed them, recognized them, in this frame of mind he is supposed by the Gentlemen, to have doubted of the validity of the Gift & therefore to have set about a Will: but he wd not supply one incompleat Act, by another more incompleat.

Dr Hay Judge . . . Mr Gilbert is clearly dead testate; the Will & Codicil are admitted: the Exors have acted very right according to their notions of the Deed's Testacy: if the Will & Codicil had been left with the Exors, no doubt they were to prove the Codicil as well as the Will: there was good reason for the Exors to presume, there were no other Testamentary Papers, the Codicil saying, "my Codicil." no Imputation can be thrown on the Resid: Legatee who has only 1000. She had a right to see wh: any Paper wd lessen the Income wch was to go to her Children; it is intricate & confused: the Paper propounded, of wch the Ct will pronounce the Exor to take Probate: I observe the Proctor has prayd in the disjunctive: that No 4 shd be taken for Deeds Codicil, or another in another Book, with a Recognition of it. I cant look on the Paper No 8, as Testamentary, but only to be used, to shew the other was so intended; I cant pronounce for that Paper, as part of the Codicil: ("the Bond for my Lady" in No 4) they are distinct Papers: there is afterwards a note of Reference, as to the Improvement of the Estate, & a Colliery, & there are intermediate words between "the Bond for my Lady, & the Nota Bene. I dont think the words "undeserving &c" can refer to the Bond, they must rather refer to the Increase of Annuity: they could not be connected with it on account of the word "therefore" these intermediate words are to be left out, because I look on them to connect with the Annuity, not the Bond – No 4. is all of the Deed's hand writing; the Bond was meant to operate for his Wife's benefit; the Witnesses swear he meant it to go, as by a Codicil, or by a Entries all prove it & shew, she was to have the Principal & Interest so far as it is not paid off; tho, he gives the Receipt for the Principal & Interest paid: what has been urged, that if an absolute Gift in his life time, this Ct &c have no Jurisdiction, it is true; all the Evidence that tends to shew that, are only favorable Circumstances to induce the Ct if it can to pronounce for it, as testamentary, if it is not, I cd not pronounce for it, however he might intend the Benefit. The Case is certainly favorable, if in Construction of Law there is any thing testamentary in it forme to pronounce on: