Q. Is it testamentary? if Testamentary. Q is it cancelled by the Deed?
I must lay great stress on P.S. (a Bond for my Lady.) wch referred to something that had gone before, supposing the Will not cancelled wch was executed in 1754. they wd have been testamentary referendo, & an Appendix to it: it was once testamentary: it is doubtfull when it was wrote; it is said in 1754 or 1760 when he talks of Alterations, or 22 Jan: when the Close of the Mem.m is dated If it was wrote subsequent to 1754. then it was codicillary: if in 1760 it cd not be revoked by the Cancellation in 1755, as Dr Harris said it would be: But if wrote in 1754 & cancelled by the Cancellation of the Date of the Paper in 1755, wch I doubt, yet it is revived by the connecting words of 22 Jan: 1761 affirmed & recognized, the Nota does connect the Page before with the Mem.m of 1761. tho the Paper of 1754 is cancelled, it is over the words P.S. the Words "To my Lady." are not crossed at that time, so remain in force, & must be deemd a subsisting Codicil to the Will: But it is said to be revoked by a subsequent Act, the subsequent date of July 1761 of my Will being left in Mr Garlands hands. this refers to a distinct independent Paper, & cant be applied to this; it is said when he made the Codicil of 12 May 1766. he did not think he had a Codicil, for that the Words "My Codicil" imply as much; he refers then only to the Will itself: I rather think so, from the Mem.m "my Will is in Mr Garlands hands, a Copy of wch is in my Bureau." he had forgot the Paper he had wrote. In no Case Revocations of Papers uncancelled are favorable in Law: Revocations in favorable Cases must be express & not implied: his Omission is a proof he had forgotten; but the omission of the Recognition dont operate in Law: On the whole I pronounce for No 4. I can take no notice of Stevens's declaration, nor even is it expresly pointed, to shew it was a Codicil; in so favorable a Case, where a Paper once testamentary & not cancelled by Law or Implication must be established as a Codicil in favor of Anne Gilbert.

The Codicil establishd.

Ibid — No 134 — Cumberlege — Powel v Appes — Cricket.

Dr Calvert — Dr Wynne.

Q. Is Mrs Powell debarred from her distributive share of her Sisters fortune, by the Release given of all demands she could have under her fathers Will, or by the Custom of the City of London, or otherwise howsoever?

Q. Is not Mrs Powell entitled to an Inventory of her Sisters Effects?

Q. Is the Inventory given by the Widow full?

Dr Calvert.... By the Custom of London 1/3 of a Freeman's Estate goes to the Widow, 1/3 to the Children, & 1/3 is called the Death's Part, as being left to the free disposal of the Dying man; 11 Geo. 3. c 18. sec. 19. takes away the Custom except where the Parties were married before 21 June 1728.

Abraham Appes died 11 June 1766. he made his Will dated 5 April 1765. wherein he left to his daur Anne Powell Wife of Wm Powel 50£ on condition she executes a Release of her Interest in the 3d of his Estate; on that condition he forgives her, & her Husband what they shd owe him at the time of his death; he appoints Rowland Read & Eliz: Appes his Exors; Mrs Powell, her Husband being dead, accepted the Legacy, & executed a general Release 5 days after the Testators death; Appes left also an Infant daur, Elizabeth, to whom he gave 200£ on condition, if she died before 21, it shd go to her Mother. he also left a Son Abraham, 3 month old at his death. Elizabeth died the day after her Father; You will observe, that by surviving, she had a right to 1/3 of the 3d due by Custom to the Children of the Deed. (i.e. 1/9) after her death, my Client cited the Mother, to accept Admon to her daur, or shew cause why it shd not be granted to Mrs Powel as half Sister; Mrs Appes accepted the Admon, & has since brought in a Declaration instead of an Inventory, in wch she has inserted only the 200£ Legacy, given by the Father to the Minor and protests agt chargeing herself with it, because if the Minor died before 21, it was given to her; you will observe she has left out the Share of the Fathers Estate, wch the Minor had

under the Custom; Cumberlege for Powel prays a fuller Inventory, that she may declare what that share of her father's Effects amounts to; Cricket alledges that Mrs Powel has given a general Release of all demands she could have under her fathers Will, or by the Custom of the City of London, or otherwise howsoever; that she has release all Interest in her own right, or under the Infants Intestacy: Cumberlege replies, that the Release was intended only to bar her of what she was entitled to, in her own right, from her father, but not to what she should come into, by virtue of her Sister's Intestacy; that the Party, when she executed the Release, was not apprized, she had a Claim on the Estate, in right of her sister, & brings two Affidavits to prove this, & says the Word, "howsoever" is only a word of course. Cricket e con: has brought the Affidavits of Appes, Read, saying it was mentioned to Mrs Powel, who was well apprized of its being intended she shd release the whole.....

Dr Hay Judge.... The Release may operate against the Widow being entitled, but not against her giving an Inventory: I cant determine the Right at present: if the Deed was a Freeman before the Statute took place it must go according to the Custom; if there is a possibility of a Right, the Inventory shd be full; if the Custom operates, she would come into what was distributeable, so merely on the ostensibility of an Interest as half Sister to the decd Infant, she is entitled to an Inventory, tho, she may have no right to a Constat of Abr.m Appes Effects, as she has barred herself by the Release; but that is not asked; at present the Declaration relates only to the Effects of the Infant, not, what, by Will of the Father, or by the Custom, might come to her; an Inventory is matter of right, it is not full with respect to the Infants Effects, I must therefore decree a fuller Inventory of the Effects of Elizabeth Appes decd.....

Fuller Inventory of Eliz. Appes decreed

Ibid — No 135. — Bogg — Blanchard v Duvernet — Falkner

Dr Wynne — Dr Collyer.

Q. is F. entitled to a Compulsory after Term Probatory is out.

Q. Shall the Term be prolonged?

Dr Collyer.... Duvernett's Allon reformed was admitted By the Day of Mich. Term. Feb. 1767 several Witnesses were produced & all examined — Falkner produced two Witnesses, examined one, returned a Compulsory, examined 2 more Witnesses 23 June 1767 his Term Probatory was continued precisely. 5 Sep: Falkner brought an Affidavit of his Client, & prayd Compulsories; Bogg prays the Cause to be concluded & assigned for Sentence; we hope, tho, one Term Probatory is in a manner expired, you will enlarge it; the Delay is caused by many Witnesses being unwilling to be examined.....

Judge Dr Hay. Falkner has no right to a Compulsory after a Term probatory is out however I will prolong the Term Probatory

Prerogative T.M.T..... — Collins — 136 — Browne & French v Ly Sophia Cranston — Greene

Is French's action admissible?

Dr Wynne, Bever — Dr Harris & Calvert

Dr Harris... opened, during which, I was obliged to leave the Ct

Dr Wynne 15 Sept. 1764. Jackson Brown made his Will & died in May 1767 Two Caveats being entered, were warned on behalf of Elinor Brown Widow, Relict of the Deed, & Alexander French, two of the Exors: 2 S. & T. 1767. Collins exhibited for Brown & French, & prayd Probate a Power being reserved of making the like Grant, to Thos. Ryder, the other Exor. Gostling Jun.r exhibited for Ly Sophia, Wife of James Ld Cranston, alledged the Decd died a Widower without Issue, Father or Mother, & that his Party, was the natural & lawfull Sister, next of kin of the Decd. Cushington for Fuller, exhibited for the same Party, and all Proctors were assigned to answer to each others Clients Interest, & to exhibit Proxies by next Ct
1 Sep. Dr T. Collins exhibited a Proxy under the hands & Seals of Browne