The Dep.t was ordered immediately to destroy, the Will left to his Care; He then tore off the Seal from the Will of the 21st of Sep.r but not in the Decd's presence – The Decd always declared the former Will shd stand – The Dep.t said it did not look well to have a Will interlined, & that it was better to write it over again, the Decd said it W.d be too much trouble

Rob.t Bull Sen.r says Glover told him, the Decd made 4 Wills, & he burnt the last, after his death – he made that Declaration 12th Nov.r 1765 –

Many W.s depose to Glover being an idle drunken Person in the way of Business.

I hope you will think the Evidence of the Will of the 21st of Sep.r being cancelled by him, slight & suspicious, that it depends entirely on one single Witness, & that the Account of a Republication, is not such, as can amount thereto, as they do not pretend the Decd did a single Act to the Will of the 18th, that will amount to a Republication, after the Execution of that of the 21st. If the Cancellation is not proved to have been with the Decd's knowledge it is nugatory & ineffectual.

Rob.t Bull says, he knows, many People have been afraid to trust Glover to write any thing for them, fest, for Gain, he shd not do the right thing.

The Decd said, "I will keep the Will of the 18th under Lock & Key for I believe, that shall stand." Tho, the other W.s dont go so far as the Writer, yet he corroborates him, by saying he was to take care of it – Glover tore off the Name & Seal, wch he then (I suppose) thought sufficient, but afterwards imagined it not cancelled till he tore off the names of the Witnesses probably he did not tear them off till the Bell rang for the Decd's death; the Man who deposes agt Glover, had entrusted him to draw the Balance in an Acc.t subsisting between them; Debt is no Objection to a mans Character; by Drinking, as it is said he does, he may possibly have forgot Declarations 2 Years ago, & where does this pass, olet, at an Alehouse, before G. Hull & Imber, who are interested in the Suit – the D.r I see, by his Opening, is ready to sell you, that G. is a single Witness; but as to the Account on the 21st of Sept.r he is not a single Witness, for he is corroborated by the two Downes, what they depose to is preparatory to shew a Vellity to die Testate. The Will of the 18th of Sept.r was never destroyd, the Intention remained; the Will of the 21st of Sept.r was only conditional; a man may make his Will legally, & execute, & declare he is not minded to have it operate; the Intention of the Testator, to give force & Validity to the Act is absolutely necessary, a mechanical making is not sufficient; this can be considerd only as a mechanical Act, which was to have force given to it, at a future time; we need not then enter into the Doctrine of Revivals. in Killigrew's Case it was declared, that where 2 Wills contain nothing contrary to each other, they may subsist together. In the present Case, there is the same Exor & the same Legacies in each; there is no Room for an Intestacy,

you could not think of saying, he died intestate, he all along shewd an Intention to die testate; he declared at one same time that the Wills of the 18 & 21 Sep.r should stand, the Will of the 18th of Sep.r was under Lock & Key – Can Parole Evidence viz. of Declarations be admitted to revive a Will? Parole Evidence is of common right, where not impeached, ought to be admitted. Wills are of common Right, there existed no period in this Country, when a man might not make a Will of Personals By the Statute of Chn: 8. a Will is required to be in writing, but no number of Witnesses is specified, not a word of parole Evidence, is mentioned, to revoke such Will; it could be so done of Goods &c

Leonard A man devised Lands, another wrote the Devise without the Testators knowledge, yet the Will was proved.. a written Will has been revoked by Parole Evidence subsequent to the Statute of Henry the 8th. Godolphins Orphan Legacy. p. 54. There is no Instance since the Statute of Car. 2. where a Will in writing, has been revoked by parole Evidence, but many where a Will has been revived; Parole Evidence is continually received to support an Act of common Right; If an Executor wanted to bring proof, that he was intended the Residue, he would be at Liberty to do it – 1 Jac: 2. T.S. made a Will & gave his Lands to A.B. he afterwards made a Mortgage to Sir Jn Churchill, the Opinion of the Court was, that the Mortgage was a Revocation, but as the Decd had made a subsequent Declaration, that his Will should stand, it was a Revival of the Devise

36 & 37 Car. 2. Skinner's Reps: 227 –

Freeman 261 } Cotton & Cotton A. devised Land to his Wife &c.
2 Ch: Rep: 138. 148. }

Vect: 1. p. 288 Si Testator. post Test. . . . .

It was agreed that slender Evidence was sufficient to support what the Decd had declared, was done animo testandi, & a Trial at Law was refused

1 Huber. p. 206. Si Testator. . . .

A Declaration is sufficient to revive a Will, not destroyd. In our Courts there are Instances, where Allegations have been received in Jennings & Whitehead it was pleaded in an action, that the Will was revived by Declarations, & the Article was received;

This is indirect & presumptive, but there are 2 direct Cases Stacey & Dickens – Vanier & Hue

" Vanier died 1731, leaving a Widow & a Sister, he left 3 Wills,
" the first dated 1724. the 2d in 1728, the 3d in 1730. the
" first remained uncancelled, the 2 last were cancelled; there
" was proof of the Execution of them all, the Instructions for
" the last Will were found, differing from the others, only as
" to the disposition of 100l, a little before his death, having
" the Will of 1724 uncancelled, in his last Illness, he bid his
" Wife carry it to an Attorney, to know whether it would
" be good; after so long a time, & enquired the next day
" whether she had been; She had not, but went the day
" after by his Orders, & brought answer from the Attorney,
" that it would be good. Per Curiam Mr Vanier certainly intended
" to die testate; the words amount to a Republication, the
" Attorneys declaration prevented a new Will, no doubt, the two
" latter Wills were made after that of 1724, those two Wills
" however being in his Custody (amongst his Papers) cancelled, it is to
" be presumed he cancelled them himself . . . . . .