Dr Dyne ... It is in Evidence that the Deed made another Will, the Exor was a Servant Maid taken in at 15: I cant agree with the Dr, that it w: be mere matter of Law; I believe the Law knows no condibional Will; If it is proved, that the Will of ye 21st: was executed in the presence of 3 Witnesses, you cant regard the Evidence given, against the solemn Act, done by the Testator, I allow it is proper to avail oneself of every Evidence; but it is very dangerous, if any Declaration could defeat Solemn Acts, explain away the Statute; It has been held to a degree of Hardship. Where there are two Persons equally related or connected, the Court will admit parole Evidence to explain which was meant. There are 3 Periods to be attended to, the Execution, the Interval between that & the Death, & the time of the Death. If says the Dr: the Ct thinks it in Evidence that the Will of the 21st was cancelled by the Decd's Order, the Will of the 18th: was revived; but the Cancellation of one Will, is not a revival of the former Will, tho, it shd remain uncancelled; No Declaration can revive it; most of the Cases are unapplicable; That of Helyar v Helyar was not about a Revival, or a Republication; the mere proof that a Person did make a Will after a former Will, w: not be sufficient to destroy such former Will; in that Case, it was only with respect to the Contents, that one Witness was allowd; that was not the only proof of the Contents; It is Law, that making & due Execution of a Will operates a revocation of the former Will; you may have as many Schedules as you please, but not two Solemn Wills

Helyar v Helyar

before Sir Geo 1753 — Davis v Evans, It was insisted the Will was not cancelled but by Accident, Sir Geo, dec held, the Cutting off the Seal was a Cancellation, wch must be taken to be done by the Decd, he had the Custody — Where an express Act is done, another express Act is necessary to destroy it; the Declarations were as strong as in the present Case, the Decd saying his Nephews were his Exors.

If the Decd did refer to the Contents of the Will of the 18th in that of the 21st of Septr it shews he was not satisfied with that of the 18th any more than that of the 21st: It is in Evidence from Glover, that the Will of the 18th: of Septr was not the whole, but was to be communicated to the Exec^x. One Witness is not sufficient to establish the Will, it w: be dangerous if one w^d c: give force to a paper either apparently on the face of it, cancelled, or by Implication of Law; The Declarations will not bear the Dr construction, if it is fact that . . . . . never saw ye Decd after, the whole Story is incredible — The Will could not be burnt, because it is brought in, annexed to the Affidavit it shews however, he falsifies; I cant believe a Man w: be such a fool as to tear off the Witnesses names, after he had torn off his own name & Seal; I believe it was destroyd after the Testators death; I may conjecture, that the Cancellation was on ye 24th, otherwise the Story they told w: be insufficient; if it is fully in proof that the Will was cancelled after the Testators death, their Cause must be ruined: you c: not possibly pronounce for the Will of ye 18th: of Septr & if you doubt of ye Proofs of that fact, you will certainly incline to the latter Will . . . . . .

Dr Harris ... What Interest has Glover to give a false account of this Transaction? it is improbable Mrs Jupe should hazard an Intestacy for 6st — It is strange that Bucknell should be the only Witness to speak to the Declaration, his being Clerk to the Agent in this Cause, renders it more suspicious — Stress was laid on the Decd's Inclination to make Entries on the Will of the 18th of Septr: Here is a Declaration coupled with an Act, i.e. Tearing by the Testator's Order; it was with this View, not to favor Mrs Jupe, but to cut out the other Legatees, who had used him ill; he could not mean to add any thing in their favor. In the Case of Davis v Evans the Will was actually cancelled I did not attempt to say, Declarations would revive a cancelled Will; the Presumption is, it was done by the Decd — If the Contents c^d: not have been proved, those Wills c^d: not have revoked a prior Will, thus the whole turned on the Deposn of one W^s. If the Contents were not proved, the Presumption w: be in favor of the existing Will, for it w: be, that the others were only Duplicates; his making 2 Wills in favor of Mrs Jupe, is a stronger Instance of his Affection for her, than any Evidence; Parole Evidence has always been received to support, but not to revoke a Will; Lord Talbot rejected it when contradictory to a Will . . .

Dr Hay; Judge Here are 4 Wills, all of which would be good if nothing had been done to revoke them; the Contents of the two first are not known; in both the latter, the Contents are pretty much the same, they differ only in small Legacies; the Decd had no notion of adding by a Codicil; the Will of the 21st was well executed, the fact is admitted, but Glover & the other Witnesses, say, the Decd was not fixed in his Resolutions; had he died on the 21st, the Will had been brought before the Court on those Declarations only, it could not have been refused, tho, there had been no doubt of the Declarations so made: on the 25th he went again, Glover says the Decd being asked, wch he sh: destroy, bid him destroy the 2d it was then effectually cancelled, what was done after was immaterial, it is urged agt Glovers declarations that he did not cancel it then, but after the death of the Testator; if the Decd did not give Orders, & Glover is to be disbelieved, this Will w: be improperly cancelled, & must subsist; but it is inconsistent to say Glover sh: not be believed, & then pray an Intestacy, Glover has no Interest; the W^s produced to his Character are sufficient to reestablish him as a Witness; if it stood singly on Glover, I dont know wh^r that w: not be sufficient, if there was no Objection to his Evidence, there is great Difference between parole Evidence, to revive & to destroy; In this Court & at Law; the Act remains to speak with the Declaration, there is a distinction between an actual Revocation, & one by Operation of Law; a Slight Declaration will revive a Will revoked by a Marriage, the Revocation here, is by the Will of the 21st there are revocatory words, indeed, in the will itself, altho