it wd. be a revocation in Law – It was laid down in Lord Anglesey's Case, that 2 Wills wch are not contradictory, may subsist – Glover is supported by the other 2 Wts. tho, they do not depose quite so strongly; if it had stood uncancelled, it must have revoked the Will of the 18th. but connected with the Declaration it may be considered, as reviving it: the Cancellation of the last Will, is an Act done by the Decd's Order, accompanying his Declarations, it looks as if by cancelling that, he meant to revive the former; I think that is revived, & I must decree Probate to the Exec: of the Will of the 18th of September

Prerogative. Ct — H.T. Feb. 23.

Jenner — No 149 — Whiting v Smith — Bishop

Drs Wynne & Burrell — Drs Marriot & Harris.

Dr Marriott

Owen Bird died 30 May 1767, leaving Sarah Whiting his Cousen German & only next of kin; after his Death a Cancelled Will was found, dated 4 Jan: 1766, & an unexecuted Paper, wrote in 1766, but no month, or day, specified, these 2 were found in a Bureau wrapped together in a Paper – It will appear, the Decd had good reason for cancelling his Will, viz, that several Legatees therein mentioned, were dead. & 2 Declarations, shew the foundation for making the Testamentary Schedule; he gives what his Wife brought him, to her Relations, & the Sums bequeathed, amount as near as possible to the whole of her Fortune – The Decd died at a distance from home, suddenly, when he was thought to be out of danger – the Decd testified no Intention to destroy the Validity of this Paper, there is no presumption arising on the face of it, to induce you to think, the Decd meant it should not stand; the Interlineations must be subsequent to the writing of it, therefore are rather a Confirmation of it – the Decd was advised to go back to Portsmouth by water, to prevent a return of the Strangury &c. a Boat was provided accordingly – On the 29th he grew worse, but did not appear in imminent danger till within 10 Minutes of his death

Owen Bird of Portsea, in Hants, died a Widower, leaving Sarah Whiting, his Cousen German & only next of kin, who applyd for Letters of Admon to him, as dying intestate, but was prevented by a Caveat ent'd by Bishop

Jenner appeared for Sarah Whiting & prayd Admon; Bishop appeared for Ja: White, & alledged him to be a Legatee in a Testamentary Schedule, of the Decd, & both Proctors were assigned to exhibit Affidavit of Scripts, & Bishop to answer to Jenners Clients Interest, the 3d Sepson

Jenner brought in Commission with Scripts & exhib: Proxy

Bishop brought in Do. — — — — — declared his Client wd propound none, & prayd him to be dismissed.

Jenner objecting, then

Bishop exhibited for Ann Bonham Smith wife of Samuel Bonham Smith, Cousen German once removed, & next of kin, & prayd Admon, with Schedule annexed.

James White was dismissed, pay: 6.8. Costs – Bishop exhibited Proxy under hand & Seal of A B Smith, & denied Jenner's Clients Interest; –

Ist is Schedule A unexecuted Paper, & died ye Testator mean it should operate as his Will?

2d Sept. T.

Jenner exhib: Proxy, under Hand & Seal of Sarah Whiting, confessed, A B Smith to be Cousen German, once removed, but denied her to be next of kin, or to have any Interest in the Decd's personal Estate; Jenner propounded his Clients Interest.

Bishop propounded Schedule (A)

4 Sepson

Bishop waved his Opposition of Jenner's Clients Interest, & confessed, her to be Cousen German, & next of kin of Decd; the Judge condemned Bishop's Client in Costs, which were taxed at £ 6.4.5.4. & paid...

M.T. 8 Day.

the only Question now before the Court, is upon ye Test: Schedule (A) Qu: is it an executed Paper, & did the Testator mean it should operate as his Will?

You find the Cancelled Will is regularly executed to carry real Estate; In the Testamentary Schedule, a Blank is left for the Day & Month wherein it was wrote; It begins by giving Directions for his Funeral, to his Exors, herein after to be mentioned; it gives his Exors power to sell his Freeholds, Stocks, &c for payment of Legacies; It gives an Estate to Ja: White for Life, & after his death to such of the Decd's Relations, as Mrs White shall nominate; It gives all the rest & residue, of the Real & personal Estate he shd die possess'd of, to his Exors, & their Heirs, except by any Codicil annexed to this my Will, I shall think fit to dispose of any part thereof, then to be directed _____ Thus the Will breaks off, without any nomination of Exors, without a Signature by the Testator, without any Attestation by Witnesses, or any Clause of Attestation written; You will find many Interlineations in the Paper, some written with a Pencil, & afterwards gone over by a Pen; you will find, some material Alterations; you will find Declarations, that the Decd considered this, as a Draft only; Thos: Bucknall Esq Master Builder at Portsmouth, is the single Witness, who speaks farther, than to the finding this Paper, amongst Papers of Moment &c to Declarations, He deposes to these Circumstances; That in 1766, the Decd & he were at Dep: House, about Michaelmas, soon after Mrs Winter's (the Decd's Niece) Death; the Decd then asked Dep: wh: he had made his Will, for the Dep: had just then lost his Wife; he replyd, no, but he intended to make it, & to leave his Wife's Fortune to her Relations; after some Pause, the Decd approved of his Design, & said, a Man ought to do what was just; About October or Nov: 1766, the Decd said, I have made my Will, & have given to my Wife's Relations what I had with her, & have charged Money to be paid, out of my Bedenham Estate, to my poorest Relations – It appears in Evidence, that on Monday the 23: of March, the Decd set out from Portsmouth, was taken ill at Redbridge ab: 23 Miles from Portsmouth; that he sent the same Day for an Apothecary & Physician, & likewise to Portsmouth, to desire Mr Edw: Winter, who married a Rel: of the Decd: & his own Maid Servant, wd come next morning to attend him; they are both examined; they say, they went on the 24th & found him very ill; Winter staid till the 26th when he left the Decd, better; the Physician thinking him out of Danger; He returned the 28th & found ye Physician had pronounced the Decd out of Danger; this Wt returned to Portsmouth the morning of the 29th & brought a Letter from the Decd to Mr Bucknall; who being exam: in respect to that Letter, says, it is wrote by the Decd, or the Master of the Inn; the Purport is, to desire he wd send a Boat & Chair, to carry him to Portsmouth; Wm Polhill, went to the Decd on the 30th who said he had been

1. Mary Burchett