very bad, but was now pure, & much better; We dont deny the Paper propounded to be wrote by the Testator, nor to have been found in a Bureau, amongst his Papers, in the condition it now is — It must have been previous to the 25th of Octr 1766 for the 7th Year of the Kings Reign began the 26th & this Paper is stated to be in the 6th year of his Majesty — the Deed lived upwards of 5 Months, afterwards; he was within 25 miles of Portsmouth, sent there to his Relations, yet never mentioned to them or to any body, during the whole time of his Illnes, his having made such a Will —

Dr Harris

The Doubt will be on the Presumption from the facts proved & uncontradicted, to shew the Deed's Intentions as to this Paper; It is clear Law, that imperfect Papers existing, (where there is no other or only a cancelled Will) may be good pro tanto, tho, such Papers shd contain Devises of Real Estate; because the Court goes upon large Principles, & will establish as much of the Disposition, as can be collected, & the Law allows; tho, by the Roman Law the Appointment of an Exor, was of the Essence, yet by our Law it is otherwise, & Admon will be decreed with the Paper annexed. on this Ground, that no Intentions once proved, shall be presumed to be altered, & that Intention shall have Effect;

The first Presumption, is, prima facie, in favor of the Testamentary Paper, & that the Testator intended to carry it into Execution, unlesse the Contrary is proved; In the present Case, it is plain, he intended such a Disposition, & there is no Proof, no Ground, to suppose a Departure from that Intention; This is different from a Case where an unexecuted Paper is to operate a Revocation of one perfect & executed, for in that Case, the Court will require stronger Proof: It is material, there was a cancelled Will, & that both the Papers, were found, wrapped together in the same Place; if the Deed had not intended this shd operate, he wd not have cancelled the other; the Presumption of the Deed's Intention, is the only Ground, whereon the Court can establish Papers, deficient in Point of Form; I remember the Case of Stevens & Stevens in the Prerogative 1761. where there was a Draught of a Will, but the Deed died before executing it, there was a Devise of Real Estate, & there were Blanks left . . . . . on the hearing, the Court said, it might be good in part — the Ct relied on the Case of Walkins & Bogly in the Delegates, where they were governd by the Cases of Loddy & Clarridge — Brown & Heath & Boxline — Tomes & Wright & Walthoe — the Deed approves of the Hint given by Bucknall; the Date of the Paper, shews the Declaration to be previous to such Date . . . . it is conformable to it; afterwards, in consequence of that Idea, on talking it over again with Bucknall, he tells him, he had disposed of his Wifes Fortune, amongst her Relations; his Relations who were benefitted under the cancelled Will being all dead, he made this; his not appointing Exors, shews only his Suspence in that point, it is difficult to name Trustees; he might know, his Relations wd have the Admon, there is nothing in proof agt the peremptory Plea admitted, to shew the Deed intended to die intestate, here is positive proof to the contrary, if nothing comes out to shew

Butler, Baker
Welsh & Pye

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* 3 Schedules, one without Date — a others sign, in Witness where of, yet there was no Witness — the 3d was unsigned, yet the Ct mentioned for the mall

an Intention to die intestate, you will be of Opinion the Deed continued his Resolution to die testate; the, he made no Exor, or Resid: Legatee, such non Appointment dont shew, he did not mean it shd operate —

Dr Harris

The Deed's Declarations, of his Intentions to give his Wife's Relations the Amount of her Fortune; his answers to Bucknall are material; he did not say, he intended, but that he had made his Will; he was subject to the Stranguary, wch many do not apprehend to be dangerous, the Physician was of that Opinion; the present Question, is not whether a Paper may be good for personal, which is not good for Real Estate, nor whether a Compleat executed Paper, can be revoked by one that is unexecuted, but what kind of Paper this is? this a compleat Paper, except that Exors are mentioned therein, but none are nominated; the Year is specified, that is sufficient, besides it concludes &c. as to shew it is finished; All the Rest &c Perhaps the Deed never intended to make an Exor; Respect to hear the Gentlemen mention the Deeds departure from his Intention, But a Departure therefrom, will not be presumed; in that Case, there must be no Evidence that the Will is compleat; here is a Declaration, with which the Paper corresponds; it cant be destroyed by Length of Time; he looked upon his Intention, as confirmed by the Act done; I am sure it will not be contended, that a Parole Declaration will not confirm a Will, if Parole Declarations can, this Paper is confirmed by the Interlineations . . . .

Dr Wynne

The Court admitted the Plea, of the Deed being taken ill the 28 of March, because Declarations, in extremis might come out in Evidence, but you see, these are none relative to this Will, to any Body, about him, at that time; the Dr who spoke first says, there is no doubt, but imperfect unexecuted Papers, may be & have been often pronounced for; I believe none but where the Testator was prevented absolutely by the Hand of God, in which Cases, Courts have allowed it for personal Estate, because with respect to that the Law is favorable, & not limited, but not, when Real Estate has been given in the same Will, because it denotes the Intention to be incompleat; And there being no Proof that the Deed was prevented by the Act of God, No Circumstance to shew what prevented his Compleating it, the Presumption on the other Side will be the stronger — The cancelled Will was for Real, as well as, personal Estate; that is regularly executed, as the Statute directs; As to this Testamentary Paper, the presumption from the Testator's writing &c. is ousted by the Disposition of Real Estate, by a Paper, which he knew &c. not operate: it is a presumption he did not intend it shd operate at all: it is very different when there is only Personalty; the Law has prescribed no Form, so that, be it ever so imperfect, by his safe Custody, his Intention may be collected, & it will be pronounced for, there being no legal Presumption against it; But we are told a nuncupt Will is not good, because defective in Substance as well as form; there is no answering Cases, where Circumstances are not stated, the Omission of a single Particular, varies the Case, in Stevens's Case, the Deed died in a few