Days, after the Instructions were given. Persons were sent for, the Deed not be executed with more Solemnity; I allow a compleat Paper cant be revoked by Time, but an Incompleat Paper may; every moment weakens it; if the Deed had died immediately after his Declaration, about Mich: it wd have altered the Case: I will not say the Ct cant receive Parole Evidence in any Case to influence in Wills, but the Ct will consider the Credit of the Deposition; the Witness speaks with precision the Deed might not, he might say something like it. Besides if B. proves any thing, it wd be that the Deed had made a Will that wd carry Land, for he says, he had charged Lands with money for his poor Relations; He must know what was necessary to pass Lands; if he intended to compleat it, he wd have executed it; I know a Will may operate to some Purposes without any Date, but Blanks are always filled up when the Will is compleated. The Paper is wrote merely currente Calamo; I know a Will of Lands, will be good without an Extor, but the Stress, I lay, is that he intended One; he was seized with an Illness, undoubtedly, very alarming; he saw Persons sent Messages; how easy was it for him to have had the Will from Portsmouth; he might have given the Key to Mr Winter; my Client is next of Kin, & entitled to the Admon by Law.

Dr Burnell ..... The Facts are all agreed between us; the Question is not whether imperfect Papers in general can operate, but wh: this Paper can, under the particular Circumstances of the Case; the Court will aid unexecuted Papers, but not without some Proof to shew a want of Opportunity in the Deed to compleat it, that he was prevented by Accidents, tho, he intended it shd be his Will; I differ with the Gentlemen in the Inferences from Negatives, viz that no Declaration is proved that Deed did not intend it shd operate; I insist: his not declaring it shd, founds the presumption, that he meant it shd not; It is plain the Deed knew what form the Law required, the Accuracy with which the Attestation is drawn looks as if some Lawyer had done it. If he intended this Paper should operate, the presumption, is, that he wd have noticed some of the many Interlineations therein. The Alterations in the Legacies are material; One gives a Legacy to the Heirs of Mrs Wallace's Body, if she shd die before him. There are many Directions to the Extors, & many References to their Judgements.

They are to direct his Buryal — to pay the Interest of £175 old Ss Sea Anr to Jn Oxford — the same to Martha Oxford — they are to pay the Interest of £700 to Mary Whiting for life — They are empowered to raise Money for payment of Legacies, to sell or divide his Stocks, Houses in Alverstoke, Portsmouth, for that Purpose — To retain the Rents, Profits of his Real & personal Estate, 'till they are sufficient to answer the Purposes of the Will. They are to pay, out of the Bedenham Estate, yearly, to Mr Winter & Mrs Crisp, 20£ a piece for their Lives; they are to pay at their Discretion, to each of his Servants, who shall live with him, at his death, 5£, if they shall think them deserving of it.

The Devise out of the real Estate, payable at the Discretion of the Extors, clearly shews the Appointment of an Extor, was, in his Idea not unimportant; the Concluding Clause, wd induce an Inference that he intended some Alteration, when he wrote this Paper; "Item All the Residue of my Estates Real or Personal, that I shall die" possessed of, I hereby give, & bequeath, unto my Extors, & their Heirs, except by any Codicil, annexed to this my Will, I shall think fit to dispose of any part thereof, in some other manner therein to be directed." — —

Notwithstanding this, no Extors are appointed.

We are told, a Declaration was made by the Deed, to Mr Bucknell, in Octr 1768, (in consequence of a Conversation with him on the Subject, the Mich: preceding;) that he had made his Will, given his Wife's Relations, the amount of the Fortune he had received with her, & that he had charged his Bedenham Estate with payment of Legacies to his poor Relations — and that the Schedule propounded, contains these Legacies.

what does that prove? but that the Deed, at that time intended to die testate, & dispose of the Legacies as above stated.

It dont prove the Deed continued in that way of thinking; i. con: there is the strongest Reason to believe he did not, by his not carrying it into Execution in 6 Months, viz. from. October 1766 to March 23. 1767.

It may be urged, the Deed thought this Schedule wd operate; Such an Idea could have existed only, in the mind of a very ignorant Person, a Character which is not applicable to Mr Bird, who clearly understood the common Forms & Solemnities attendant on Wills the Manner of his cancelling his executed Will, demonstrates that, he tore off the Seals, & the Spaces where the names of the Subscribing Witnesses were wrote — No Imperfect Papers have been pronounced for, where the Intention has not been shewn permanent, & the Person prevented from executing it by the Hand of God — That was not Mr Bird's Case who was taken ill within 23 miles of Portsmouth, whether he sent more than once, continued ill 7 Days, yet never carried his Plan into Execution, the natural Inference, That he had altered his way of thinking, laid aside any Design he might have formed to give Validity & Forces to this Paper.

Dr Harris ..... Here is not a Word of Evidence to shew, the cancelled Will was of the Deed's handwriting — When a Person is disposing of his personal Estate, he is not presumed to know the Law respecting the disposition of Real; when he does not intend to dispose of Real Estate, he need not conform to the positive Law.

The Drs dont know how to get off from Bucknall's Evidence; they allow his Honesty & Veracity, but will suppose he might be inaccurate or mistaken; the Declaration varies this from other Cases; you have established Papers imperfect in themselves, if a few words could be proved to shew Intention; the Admon with the Paper annexed, must do every thing an Extor could; his cancelling the Will, is the strongest Confirmation possible, he intended to die with a Will; the only Question, is, whether he has carried that Intention so into Execution, that the Law will give it Forces; no man talks of a perfect Will, he imagined this Paper was perfect, & not supposing he was dyeing, wd not send for it.

Dr Hay. Judge .. The Legatee who brings this Paper before, had a right so to do; Imperfect Papers are established or rejected according to Circumstances

N.B. This Cause being heard on Arches by Day, on acct of the many Causes assigned for hearing, the Proctors were obliged to consent in Acts of Court, to Time & Place —