you cant argue from one Case to another; Every Case must depend on its own particular Circumstances, for when a Paper is intended to be validated, & is carried into execution, as far as Opportunity will admit, if the Party is prevented by the Act of God, tho, it should contain a Disposition of Real & Personal Estate, it is clear the Paper may be good for Personal only; the Intention of the Deed is the grand Rule to guide the Court; I have no doubt from the previous Conversations with White, Bucknall &c that the Deed intended a will to benefit his Wife's Relations, at that Time; I dont think his cancelling a will goes so far, as to shew, an Intention of making an other; but an Inception of another afterwards, shews an Intention to die Testate: It is clear from Dates & Evidences, that between Mich.s & October 1766, he drew this Paper, for the Reasons alledged by the Council; If the Declaration to B. (that he had made the Will) was to have its utmost weight, it goes only to part of the Will; His giving to the poor Relations, at his Exors Discretion, is a Defect in Substance; there is no doubt, he intended to name Exors, for they were to have the Residue, & to judge of the Servants Merits; therefore it is incompleat in Substance; if he says Exors hereafter, & imposes Acts on them, it is a Condition he has imposed on himself, so that not compleating it, It is substantially, as well as formally Defective: If he had only left Legacies to his Wife's Relations, agreable to his Declaration to Bucknall I will not say, how far that Declaration, w.d have cooperated to substantiate & carry such Will into Execution - I cant set up Parole Declarations, inconsistent with the Act itself &c I must think the Declarations w.d be contradictory to the Paper; I cant look upon the Declar.n to Bucknall, as Proof of his having charged his Land, for, in fact, he has not; it may be consistent in a qualified Sense, that he had made i.e. that he had begun, or drawn a Plan for a Will, wherein he w.d do so & so. This Paper comes before me, liable to most of the Objections, which attend imperfect Schedules, tho, not all, for there is a Declaration to support it in part, & in part only; he either had an unsettled Intention in speaking these Words, or else the Inference is that he had departed from the Intention, he was in, when he made the Declaration; if he had died suddenly as pleaded, it w.d bring it within the Cases, where the Act of God dont prejudice; how does this turn out? he had an Opportunity, for there is a communication frequently between Portsmouth & Redbridge; he c.d have sent the Key, if he had shewn a Solicitude about the Paper, it w.d be something, but there is not a Syllable of Recognition: I dont think it varies much from his being ill at Portsmouth; it was not a sudden death, for it was an alarming Illness, as was observed by the Council; I am obliged to hear every thing, for by being circumstantial, Things may come out upon the Evidence, wch may be material to aid my Determination, wch Circumstances cant appear from

the Plea itself; the Plea is stronger than the Evidence;

Reasons which operated in the Cases.

I am of opinion, the party propounding this Paper, had a reasonable Ground to lay it before the Court, but I think the Cases determined in the Delegates are applicable to this, I therefore pronounce agt the Validity of the Paper & decree Admon to the next of Kin.

The Paper pronounced agt. Admon decreed to the next of Kin. Appealed

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Consistory

Holman — N°150 — L.d Bolingbroke v. Lady Bolingbroke — Stevens

D.r Collyer & Harris — D.r Calvert & Wynne

There was only a sham Opposition & therefore satisfied my Curiosity by noting the Facts - - - -

D.r Collyer.

Libel admitted 5 Dec.r 1767. Sentence given 9 Feb. 1768.

I am Council in this Case for L.d B. has brought a Suit of Divorce against his Lady, for certain Slips & Faux Pas, which we at this Quarter of the Town style, by the vulgar name of Adultery: the Account given by the Witnesses, I will state to the Court, as follows.

Lord & Lady B. being lawfully married in . . . . cohabited, had several Children, & lived together till the latter End of Sept.r or beginning of October 1765, when Lord B. went to Newmarket, & on his Return, found Lady B. had eloped, he tried every method to induce her to return but without Success, & from that time he has never cohabited with her; In 1766, there grew an Intimacy between Lady B. & Topham Beauclerk Esq, who frequently sent Notes to her at her House in Clarges Street - In June or July Lady B. went to pay a Visit to L.d & Lady Pembroke her Sister, at Tunbridge Wells, where she Staid 6 Weeks; M.r B. went also to Tunbridge, & staid at the Wells most part of that time, during which he visited Lady B. One Day when he was with her she called for a Glass of water; the Servant who brought it, (being suspicious of some Familiarities between them) as he went down Stairs, heard them go across the Passage, into the Opposite Room, where there was a Couch, they staid there some time & then withdrew; the Servant went afterwards, into the Room, & found the Couch Tumbled, as if by 2 Person lyeing thereon, & the Window Curtains let down.

When Lady B. returned to London, M.r B. visited her often, at which times, she ordered no body to be admitted; the Servants often suppose they had lain together on the Couch in the Room where they sat, from observing one Part of the Couch soiled with Shoe Dirt, & the other End with Hair Powder - On Christmas Day 1766 Lady B.s Servant . . . . . Flockton went by her Order to M.r B. to procure Money for a Bank Note, who replyed he had none at that time, but w.d soon procure it, & accordingly sent her a Purse of Gold, for which she gave Flockton a Guinea — 26 Dec.r Lady B. went to her Country House at Taplow, Bucks. M.r B. frequently visited her there, sometimes staid till 2 or 3 o'clock in the Morning, sometimes he came in a Morning, & would dress there; he ordered in Wine & Provisions, acted as Master they were locked up together at different times, particularly on the 15th of Jan.y - 30 Jan.y Lady B. returned to London ill of the Measles; M.r B. accompanyd her to Cranford Bridges, where he got into a different Chaise & came to London - Lady B. was for some time confined to her Bed, M.r B. was admitted into her Chamber; in March 1767 Lady B. grew visibly pregnant, so that all the Servants took notice of it, She had her Stays let out; She sent for D.r Hunter, (who had attended her on former Lyeings in) who came privately, on foot, to her House; when asked his name, said it was immaterial, & bid the Servant tell Lady B. a Gentleman wanted to speak to her, that D.r Hunter when introduced, found her with Child, & in great Anxiety of Mind; She agreed to correspond with D.r H. under feigned names, said She c.d conceal it from the Servants by discharging them; She hired a nurse Molyneux, had Physic sent to her at Taplow, addressd to M.r B. the Maid tore off the Labels, gave the Phials to her, all the Servants were discharged but her own Maid & a Postilion, who lighted the Fires; before She came to Town to lye in, a new