on his Character - it defeats the purpose on wch it was pleaded
I wd take him at the time he was drunk not to do an
Act in October, ~~in order~~ to be practiced on - If they can prove
the 2d Art: let them state a fact, that it was executed they
have in the first Art: pleaded Contradictions to the other
Allons -

Dr Calvert ... You said, Sir, if the Counsel cd pick out any thing relevant
it might be received - I dont know that any Practice settles
the Number of Allons, but I may say the Ct will set Bounds
if Parties drop in Allons continually; the Dr alledged an
Excuse for it - there shd have been an Affidt the Assertions
of Counsel however respectable are not Evidence; He must
have known of it & suppressed them - Tho' this Act is not a
direct Repetition, yet it is so in Substance - In one Article
it is pleaded that Mr Lyeet found the Deed delirious in October
then they say he was made delirious in Septr & continued so
to his Death. then he was certainly so in October - he died in
Feb. 64; so that accordg to their Acct he continued intoxicated
for 6 Months - It was very natural to prevent y Bells ringing
without any bad design - when they before pleaded that he might
recover if properly taken care of, there was not a word
said, of the Cause of his Disorder - The 2d Article only
says "in order to sign" they shd have alledged that it was
signed, the Charge being little less than a Charge of Murder
the Client himself brings it; the Counsel do not sign it - It
has never been approved or read by them, they have not
testify'd it under their Hands

Dr Harris ... We allow this was known before; the Party is ready to
make an Affidt it has slipt his memory - We rely on our
other Allon - it induces a presumption that the Will was
not executed on the 13th, & moreover Biddlestone declared
on 19th Septr that Lyeet was his Extor; he wd have been
a deceitfull Man - We have pleaded he was in a delirium
on Septr 27th. there were Intervals between. take the whole
Allon; if it was executed on Septr 13th, wd it have been
tendred again in October; we thereby take upon us to shew
it was executed in Octr - Before Publication, any relevant
Allon may be admitted

Dr Wynne ... Criminal Matter being charged in this Allon, is the reason
of its not being signed by Counsel; the Ct has allowed such
Facts are proper, by admitting the other Allons - 3 Pleas
have been given. there has been no longer time taken up
in this, than in all Causes of Consequence; we have been
employd in examining Witnesses - We say the Wine was not
administred as a Cordial, but to such a degree as to intoxi-
cate; this is a charge agt Mr Lovegrove: we say y Testator
was so ill he ought to have been in Bed, hav: a total, constant
Delirium - The Bells being stopt ringing, fixes the time of the
Illness.

Judge
Dr Hay ... It is admitted the Party has already pleaded twice; the
other was a common Condicit only, in order to revoke a Will
appearing subsequent - I know no fixed Rule for the num-
ber of Allons; they depend on Circumstances; I will never
reject an Allon, because it contains hard matter agt
an Opponent; It is the duty of the Ct to receive it: I think
I shd reject this, not out of Tenderness, but because the Party
has given no Satisfaction, that these facts cd not be offered before
he has given no Affidt tho, he declares he is ready to give one -
It is always a Rule to reject an admissible Plea, if not offered
in time; otherwise there wd be no end of the delay: In the former
Plea, the Deed was said to be incapable & delirious, why did not
these facts come out on the first Plea; that Omission will found
me in rejecting this - In the first Plea a special delirium was
alledged if the Witnesses cant be examined on the points now
stated, this Allon must be rejected as contradictory. the Rule is,
you cant contradict the matters given in before - They have
virtually pleaded that it was not executed on the 13th of Sept
but have alledged it to be between the 25th & 30th - I see the
Allon is artfully drawn, as if it neither contradicted nor
repeated, I think it does both, & reject the Plea -

Prerogative
Id:

No 33 Pepper, Markham & Markham v Markham

Fuller — Dr Wynne — Dr Clarke — Altham

Dr Wynne ... I am Counsel for Anne Pepper, Wm Markham Nephews, Neice of Thos
Markham decd; he left a Will dated March 1744/5 wholly written
by himself & attested by 3 Witnesses, therein named no Extor, but appoin-
ted his Wife, Mary Markham, Universal Legatee. 19 Sep: 1755 Admon with the
Will annexd was granted to Mary Markham - In March 1765
a decree was taken out agt Mary Markham (to bring in y Will
& prove it in solemn form) by Anne Pepper, Wm Markham
Nephews & Neices of Thos Markham Esq. Altham for M.M. propounds
the Will. 5 Witnesses are examined -

Sarah Nun, formerly Harrison, a Subscribing Witness, says she
well knew Thos Markham 3 years; did not see him for near
years before his death; that he & his Wife visited her
Father & Mother - That whilst the Deed lodged at
about the year 1744, as she best remembers, she was called
into a Room in her Father's House, where her Father, Mother
were, that she saw a Paper lying on the Dresser, touch her
Ft & Mr were Witnesses; that She set her name to it at their
request, but knew not what the Paper was; but on looking on
the Attestation to the Will, says, the Handwriting is her Ft & Mr
& the name Sarah Harrison was her Name; cant say wht this
was the paper: Has seen her Ft & Mr write several times &
knows their Handwriting very well, that her Ft & Mr were
people of Credit - To the Ct. Interrog: she says, she was not
present when the Will was executed by the Deed, nor knows
where it was executed by him - To 9th. Interrog: Confesses on
being asked, wht she had signed the Will of Thos Markham,
she offered to take her Oath, she never had sign'd a Will for Capt:
Markham

NB . . . . . a Witness to the Testator's Handwriting was objected
to, on acct of this Depon being improperly taken
Qu: Wht a Witness examined on an Allon, can be read to an
executed Will, as to Handwriting?
I insist there is a mode of pleading in this Ct: viz that it is
his Hand writing & known to be so: if they intended to examine
to the Hand writing, the Parties wd be apprized what Witnesses
wd be used, they wd suppose it a Subscribing Witness, or one
who saw him write the Will; I object to it as extra
articulum. This not sufficient to say it is dcd H. Writing, but
that the Witness saw him write it -