The Allon will depend on the propriety of pleading..

Dr Collyer... We have examined no Witnesses on the Condidit; our difficulty will be, that if this Will is pronounced agt, we cant establish ours, because we think him incapable; we cant have an Admon because we have propounded ours. The Condidit was unadvisedly given..

Dr Wynne.... I must beg leave to insist, they can have no Interest, if it is not under the Will of July: it is extraordinary, they shd give an Art: that wd not have aided this Question: if the Ct cant stand, it is merely as a Circumstance. The Record, where a Party is admitted to be a next of Kin, Affection is unnecessary to be pleaded, being always presumed, unless pleaded on the other side; Art: 3. the Ct wd hardly think this Article admissible, that the Party shd endeavour to establish a Will, by a fluctuating, doubtfull Capacity; where Instructions are not proved, a stronger & fuller Proof of Execution is requisite, & also of reading over. They have no Interest if the Will is not established; a general saying of Inebriety, violent Temper, without particular facts, could only be received as an introductory Article; the Ct will not admit an Article pleading that ... Newson did so & so, without stating some facts to shew, she is not such as not married &c. Declarations of the Party uncoupled with Facts will not do: it does not appear from the Plea that it was proper. The 8th Art: seems to undo what little was done in the 3d Art: the fact in the 9th is useless; it shews only an Assignment made but no facts to prove Incapacity or Imposition when made; the 10th is as irrelevant, that Newson went & told these Parties he wd give them 500. every body wd wish to get rid of a dow Suit. no Inference of Fraud &c can be drawn from that.

Dr Collyer.... If we require no answers, we cant be obliged to prove. cætera desunt.

Dr Hay. Judge When the Cause came before me, the Objection taken was to any matter being pleaded, wch was contradictory to what they themselves had laid; in the 3d Article, they had pleaded, the Deed was not in his Senses; now the time of his total Incapacity is contrary to the Condidit, wch is not matter of form, but serious; you shall not plead matter over again, nor any contrary matter; instead of saying his Senses totally failed him, at the time he made your Will, you plead a fluctuating Capacity, wch is a Contradiction to what is laid in the Condidit, that he had a full Capacity. I cant conceive, that because you have begun in a testamentary cause, you may not oppose as a daur, in an Interest Cause, as a daur she has a right to oppose any Will; I shd apprehend y Proctor may have an Answer to her Interest. If you set her as a daur to oppose, without subducting the other Plea, you must appear to her Interest; I will never suffer you to leave the Article of dubious Capacity. all these facts generally pleaded may be received, as they do not contradict the former Plea. I must note, that in whatever manner they proceed, if they fail in the Proof, I shall condemn them in exemplary Costs.

Allon admitted..

Prerogative.. Adderley no 123 Peachy v Peachy by her Guardian Irenley
Dr Wynne Dr Harris

Dr Harris..... John Peachy is the Deed, he made his Will & therein appointed his Brother Richd Peachy, Resid: Legatee in Trust for all his Sons & daurs, to whom he gave his personal Estate, to be equally divided amongst them, Share & Share alikes, to be applied to their respective uses; the words of the Will were as follows; "I doot to his Wife Elizabeth in full" " of dower. I doot to ..... to put him out; I give & devise the" " Remainder to my daur Mary Peachy, whom I had by my first Wife" " before marriage, Sarah my daur, & Richard my Son, & the respective" " Shares of my Son & daur, I direct to be applied to their maintenance, &c" " if Sarah & Richd die minors, to my daur Mary, or if one of them, the" " Share to the Survivors, my daur Mary being one.")

Q did y Office right in not obeying y Decree of Ct?
& shall y Admon be revoked?

Irenley as Proctor for Elizth Peachy, who was assigned Guardian to Richd Peachy for the purpose of administering, till he shd be 21. 10 April 1767 applied for Admon with the Will annexed, the Ct accordingly granted it to Elizth the Widow, Wm the Brother of the Deed (consented thereto) afterwards Adderley appeared for Mary Peachy, daur of the Deed by a former Wife, before marriage particularly described as such, in the Will; as one of the Beneficiary Resid: Legatees: on applying for a Commission to swear the Guardian, the Office refused to issue one, because Mary was not before the Ct, & no Proxy of Renunciation was exhibited from her; the fact is, that Mary Peachy, was a minor on the 10th of April, but is now of age, Adderley therefore prays the Admon may be granted to her being a Major & one of the Resid: Legatees & con. Irenley prays either a simple Admon to his Client, or that she may be joined in an Admon with Mary Peachy..

Dr Wynne.... I am Council for Mary Peachy, a natural daur indeed of the Deed, but who is very particularly described in this Will, under which, there is no doubt, but that she is equally intitled with the legitimate Children; I know very well, that under general words to all his Children, it wd be doubtfull wh: the illegitimate was to be included, but in that case, the Court wd admit Circumstances to determine it; By the Will there is only 200 given to the Widow, Richd P. the Testor's Guardian died without taking Probate, Wm Peachy was the Survivor, who (consenting) admon was granted with the Will annexed, to Elizabeth the Widow, the Adderly who present & consented thereto, it was not for Mary but Wm, however it was rather by a Surprize, for had Mary been mentioned, the Ct wd have taken care of her; the Office said it cd not be done without a Proxy from Mary, who was equally entitled with the other Resid: Legs: there is a Consent of 2/3 of the Interest; the Ct will never grant a joint Admon, where there is not a consent; It will never decree Admon to one Party for herself, & to the Guardian for the use of another the Minor on coming of Age wd have had it, if an Admon had been granted instead of one that was expired; it is a material Circumstance that the Testator has taken the Children out of the hands of the Widow

Dr Harris.... The first Qu: is wh: Mary is a Resid: Legatee? for the last Clause says my Daughters; I allow it does not appear, there were more; they are all Resid: Legs: whatever the Doctrine may be with respect to Beneficiary or Resid: Legs: Guardians have always been looked on as the Persons they represent; the Widow has had a Decree in her favor; what is done one Day, cant be reworked on another, unless by Appeal: tho, the Judge had decreed it, yet the Office refuses Obedience wch is assuming a very extraordinary power; there is no occasion to cite a Minor; if a Major dont appear, he is in Laches; in Admon the prior petend is to be considered; Cases may differ, with respect to Resid: Legs: the Admon was decreed till one of the Wards came of Age, neither of them are; I dont see why a Representative of a Resid: Legatee has not the same right, as the Resid: Legs: himself, I hope at all events you will join them in the Admon..

Dr Hay. Judge.. I own, I think, there can be no Doubt of Mary Peachy being a Co-resid: Legs: from the whole Tenor of the Will; there is only one other daur, Sarah, under the word, Daughters, then Mary must be included; the single Qu: is with respect to the Admon; Mary did not appear, as a Minor she cd only appear by her Guardian; but she did not appear at all; in the Case of Resid: Legs: Admon can only be granted during the minority of such Resid: Legs: If Mary had appeared, it wd have expired of course, when she attained 21. seeing her a Co-Resid: Legatee the Office did right; the constant Usage is to have a Renunciation from the Person interested, before you can admit another; if the Admon had passed the Seal, it must have been reworked; I think Mary as Resid: Legs: has an absolute right; I dont found myself on the Consent