Judge to call on the Party to justify, & answer to the Presentment; if the Charge is confessd, the Judge decrees. If denied, you must go on in the usual way; you cannot proceed Summarily: I look on the Proceedings as wholly irregular & null: the Court cant vary the Method of Proceeding established by Law.

Proceedings set aside

I think it has been done in the Supreme Court of Delegates; Ld Hay once sent for a Witness in an extraordinary manner. I can not hear the Question on this Evidence –

Prerogative
M.T. 35

Bellas No 173. Allen v. Chapman & Others Stevens

Q. Shall the Allon be admitted?

Dr Calvert, Bever Dr Harris & Wynne.

Dr Harris. I object to the first Article of the Allon now offerd, as being contradictory to itself, & not to our Plea. In respect to the 2. I apprehend it is not sufficient to say, it is not a true Copy; for we said it was the Substance, which is all the Statute requires –

It is not material, the Writer should understand the Paper, or that he or the Bp of Glocester, did not think it testamentary; their Opinion is nothing. Serj. Wynne proved a Will, many Years after, came a Scrap called a Codicil, the Serj. thought it not one, but the Court was of another Opinion –

The Persons subscribing, cannot depose to their own Surprisitude; viz: that they did not remember what the Deed said: you will not admit this: the Statute supposes them to remember.

Dr Wynne It is not sufficient for a Contradiction to be pleaded in an Allon, unless it is a material one: the Question is, Whr the Fact alledged, if proved, can go to the Validity of the Codicil? it was at most a Mistake – It is said not to have been read over to, or understood by the Deed; but we have pleaded the Reverse, & exhibited the Copy; this is a direct Negative, how can it be proved? The Operation is a different Consideration; if he leaves a Debt oweing by his Brother, & none was due, the Disposition was nugatory, but it will not vitiate the Paper

Dr Hay. Judge. They undertake to prove the 5th, Codicil, & plead it very specially as a Mutcupative Codicil: the Court did not give an Opinion, whether it could be pronounced for: but admitted the whole plea, to have the fact before the Court, the Allon cant be admitted where the Statute is not complied with, but when that is observed there is no knowing how the Circumstances will turn out; every thing Circumstantial as well as

Substantial & essential must be admitted; this Allon pleads material Contradictions, that the Paper differs from that propounded by the Exors; for in that there are References to the Will proved by the Exors – The Clauses the Clerk positively alledged, not to have been read over to the Decedt & to shew they were not, it is alledged, that the Estate is not . . . . . It may be material whether it is a Transcript: it must be connected with the first; that the Decedt had no Intention: we must see how the Case will turn out hereafter: the 7th Article is the least material; however let the whole stand, in this Case, where the Circumstances are so nice –

& refers to a Book in possn of Allens Exors

admitted.

Ibid. No 174. Wood v. Mole & Askin

Petition

Collins Goslin Bargrave

Q. Does a Personal Presence in Ct bind one who is not a Party?

Michael Mole died in August last, leaving Martha Mole, his Widow; Susan Mole & . . . . . Fletcher his Sisters, who propounded a Testamentary Paper; the Judge rejected the Plea & decreed Admon to Martha Mole; Michael Wood was then in Court; & as a pretended substituted Residuary Legatee, wants to propound this Paper again the Affidavit sets forth his being Conusant of the Decree; & therefore there is no necessity to cite him over again . . .

Dr Hay Judge. Mr Wood is interested 400£ under this Paper: he was not judicially before the Court; tho, if a Man is personally so, he is not obliged to appear; if he would he might intervene & enter a Caveat; he is not bound by what passed between the Widow & Sisters –

No.

£ s d
1. 6. 8. Costs

Collins prayd a decree with Intimation, against all the next of Kin, to see the Will propounded; returnable next Term, some of them living in the W. Indies.

No 175. Mole v Askin & Fletcher

Q. Have Commrs proceeded duly & without delay

On the Costs of a Commission of Appraisement –

Goslin says it appears, from the trifling Articles in the Inventory, that it was done to harrass: She has estimated them at a higher value – the Commissioners adjourned from day to day, unreasonably: they took 5 Days to appraise what only amounts to 70£

Dr Hay Judge. This Complaint comes too soon: you joined in the Commission: the proper time, is, when the Distribution comes in question between the Parties entitled –

Complaint too early.