See Fol. 15: 24

Prerogative Ct
2d Sep: E. I.....

No 59

Woodward agt Sanders

Admon of Woodward Intestate

altham — Dr Harris, Burnell — Dr Wynne — Bishop

Dr Harris..... Mrs Anne Ward ..... died 28 Feb. 1768 leaving a Will by wch she appointed John Woodward Exor, he is opposed by Mrs Sanders the Daur of the Deed, & we are now before you on the Admon of an Allon

Dr Wynne..... I object only to one Article of the Allon, wch pleads a Letter wrote to Mr Hand, wch is not exhibited: now I apprehend it to be a Rule that when a Letter or the Contents thereof are pleaded it ought to be exhibited (as it may contain what may be serviceable to us,) or Cause shewn why it is not.

Dr Hay Judge.. Here is a Proctor of this Ct wrote to by Mr Hand, who answers that he cannot comply with his Request, being already engaged by his Opponent – Such Letter must be in Mr Hands possession; if Parties can produce Letters pleaded they should do it – there is great use in bringing in all Instruments, it is very proper to call for them; In Foster & Wright, the Conclusion was rescinded, because the Party had no Opportunity to cross examine – the Proponent shd plead, that he had applied to the Party, that he refused to comply with his request, to transmit the letter pleaded, I admit the Allon the 12th Art. being reformed wch pleads a letter wrote by Mr Bishop to Mr Hand ...

No 60

Morris agt West falsely calling herself Williams

On Revocn of Admon

Jenner for Holman } Dr Calvert, Burnell — Dr Harris, Wynn — Longden

Dr Harris..... John Williams Esq died 1763 he was married in June 1742 at the Fleet to Mrs ..... West (daur of Ld Chancellor West) & immediatly went to Bristol to the House of ..... Tyler where they consummated & cohabited as man & Wife for years, when they removed to Gloucester, where they lived together, 7 years, during which period they had 2 Children, from thence removed to Brook Street Hanover Square where they continued till Mr Wms death, being styled by Persons of Fashion, & reputed to be Man & Wife

Dr Calvert..... We have given no Plea, or Interrog: they have pleaded the Marriage at the Fleet, reputable Cohabitation at Tyler at Bristol, removal to Gloucester, residence there 7 Years, Birth of 2 Children, have exhibited the Registers of Baptisms, examined 7 Witn: to shew the Reputation of their being married – they plead their going from Gloucester, to live in Brook Street, & continuance there under a reputable Cohabitation & Owning to the Time of Mr Williams death – they plead a Pension granted to Ld Chancellor West, his Wife & Daur for their joint Lives, Mrs West the Daurs enjoyment thereof, appointing Mr Clements Agent for the Receipt of it in Dublin his Payment thereof to Mr Williams as her Husband, who in such Capacity gave regular acquittances to Mr Clements – a Passage is also pleaded in the late Judge Burnets Will, wherein he (who was her Uncle) styles her Mrs Williams

Dr Harris..... Mrs Williams possessed herself of the Admon to Mr Wms & continued therein a whole year; here are Exhibits & Evidence wch stand uncontradicted; I suppose then, this must be a Question of law, wh: one of the Parties, being alive, the Marriage shall be pronounced for unless there is actual Proof of it; It is not necessary both the Parties shd be dead, to induce the Ct to accept of presumptive Proof in favor of Marriage Bond & Bond before Sir Geo Lee 1753. the Marriage was denied by a Son by a former Wife, it appeared the Woman had a Child by the Husb: before the marriage, yet as there was a Cohabitation for 16 Years, Children Baptized, as lawfull Children, the Presumption was, they wd not have been so baptized, unless they were legitimate. Voet de ritu Nuptiarum (a) In the Civil law in Scotland they dont require the Birth of Children

(a) Voet. Contrahunter nuptia secundum

But where there is Cohabitation, they decree in favor of the Marriage Conrad & Ds the Man began a Cause of Jactitation, the Woman set up a Marriage, but cd not verify it, she offered the Fleet Register in supply of Proof, but the Ct wd not receive it; she proved the Man's teaching her to read; Simpson Chanc: of London pronounced for the Marriage, but his Sentence was reversed by Sir Geo Lee, on Appeal, by reason of the Woman's bad Character; otherwise the Marriage wd have been established, tho, both the Parties were living – 2 years is a Space of Time sufficient to have 2 Children, if prove such a Cohabitation, it is enough – Mr Morris & his Wife have received a Present from Mrs Williams as Administratrix of Mr Wms

Dr Wynne.... I believe the marriage cannot be proved, merely live in this Country as in others; but it is the invariable Custom to allow it, where one of the Parties are dead; if both are living, I believe it is necessary to plead the fact of Marriage – It may happen, that a Person brought from a distance, may be married & go away directly; It is frequently out of the Power of the Parties to offer any other proof than repeated Cohabitation, having only the Evidence of such Witn: as the Fleet afforded The Evidence of Persons at Glocester is very full, Mrs W. was not a low Person, she was Judge Burnets Niece, (visited by Persons of Fashion;) he gave her a Legacy, wch he wd not have done, if she had lived with a man to whom she was not married; It is a very compassionate Case of a Widow & her Son; the Plt by living & conversing with her, might find out what she could & what she could not prove – It is y: Doctrine, y: you need not prove the fact of Marriage where there is a subsequent Cohabitation with Reputation.

he only left y: Balance of an Acct: to wch she was entitled in right of her Mother

Dr Calvert.... I hope you will think there is no Imputation on Mrs Morris; when a Person discovers a Slight, she is justified in reason & Equity to assert it – I believe the Doctrine contended for, will hold in general, but is not applicable to the present Case – Dr H. did not distinguish in his Quotation from Voet, how far Use alone shd operate towards establishing a Marriage – As to the Circumstances of the Cases mentioned, the Dr did not state them; one contradicts the other – the Gentlemen allow that Cohabition is not sufficient, if both Parties are living; one Party can tell where she was married as well as if both were living, where both are dead it is otherwise, nor can the Children speak to that Circumstance – The proof here is deficient, they plead the Time of the Marriage to be in June 1742, cant it be deemed sufficient to put this into an Allon, to have it admitted, yet not be obliged to prove it? There is not even the Fleet Register, wch wd have been some satisfaction to the Ct that such Marriage existed, tho it is not Evidence, why have they not examined Tyler or assigned a Cause for their Omission why have they not produced Witnesses from Bristol? they have laid a base before the Ct wch must induce a presumption of mala fides: they prove only Cohabitation at Glocester; they cd certainly prove a Cohabitation in Brook Street, as they plead it to 1763; they cd prove the fact of the paym: of the Pension, if true – There is no Identity of the Person mentioned in Judge Burnets Will, the Deft ascertained, but the Identity was proved, it is dated in 1748 during the Cohab: at Glocest: We admit she had there the Reputation, wch might deceive Judge B. as well as the rest of the World – Mrs Morris, when she accepted the Ring, was ignorant of these Circumstances; we are by Accident precluded (by the negligence of the late Proctor in the Cause) from making use of those Papers wch wd have solved these difficulty this Circumstance will oust all Presumption agt us –

Faulkner died no plea exhibit left under Mrs W. hand: as he was deceased by his Client

Dr Burrell..... The present Question is, wh: there is such proof offered, as to induce the Ct to pronounce in favor of the Marriage, I will readily admit if the Deft had made out all she has pleaded, there wd have been little occasion for my taking up the time of the Ct; but when a Party fails almost entirely, in ascertaining those facts she assumes the proof of, the necessary conclusion must be this, that the Assertions were groundless & false; the Gentn are well aware of this, & therefore have sidiciously for their Client, insisted, that a Cohabn with reputation at any period, subsequent to the Marriage, is sufficient to authenticate it where either of the Partys are dead, that the Ct will not expect such strong proof in a Case of Interest, as where the fact of Marriage