comes immediately in Question; I shall readily agree with them, in some of these Positions, but in others must differ very widely; I can never subscribe to that Doctrine of Cohab.t at any period subsequent to that, on wch the Marriage is laid, being sufficient to ascertain the fact of marriage; if so absurd a Rule was once adopted, it would be impossible to invalidate any Pretence of Marriage whatever; every Intrigue, under that Predicament, wd be conjured up into lawfull Matrimony, & there wd be scarce a Family in England, who would not sooner or later, have just Grounds to lament so ridiculous a Regulation; whatever may be the Laws of Scotland, or the Customs of other Countries, is not my Province to consider, We are bound by the Laws, Customs of Great Britain, & by those only; If the Doctrine now contended for, had prevailed in the Reign of Henry 3d, the Bishops & dignified Clergy, would not have been necessitated, to ask the Permission of the Barons, to legitimate Children born before Marriage, nor exposed themselves to the Refusal they met with; they would have clearly perceived, they had only to wait till the death of one of the Parties, when a reputable Cohabitation at any short Period, would salve all Defects; In the present Case they have not attempted to enter into proof of the many Facts laid, except the Cohab.t & Baptism of 2 Children at Gloucester, wch I cannot consider as any Proof at all; can it be conceived, they would be so injudicious, to blast their Reputation by declaring the Children to be Bastards? nothing is more common in Cases of Adultery, than to lay the Birth of Children in order to prove the fact Charged, It was so laid in the Cases of Scott v Scott & Ware & Ware a Case of Incest — Have the Gent.n a sight any reason, why they have not examined. Tyler or produced the Fleet Register, why they omitted to examine Mr Clements or exhibit the Receipts given by Mr Wms for the Pension? I admit that the Ct will not demand stricter Proof than the Case will furnish but then, they shd have satisfied the Ct they have offerd all the Proof they are able; Upon the Whole I hope you will think they have not made out their Pleas, but have totally failed therein, & that you will pronounce agt the Int. of Mrs West revoke the Admon, grant a new Admon to my Client & condemn Mrs West in Costs — Mr Morris being one of the Securities to the admox: shews he was then a Stranger to these Particulars...

Stat.: 20 Hen: 3. c. 9 — By the Law of Scotland a subsequent marriage legitimates Children born before

Dr Harris.... We are not bound to offer superfluous proof; there is sufficient as we apprehend; we have pleaded & proved they lived together 8 Years — tho, one Party is living, Cohab.n is sufficient, otherwise it wd be impossible to prove a Marriage; It is true, we dont bring the Cohabitation down to Mr Williams Death; the Civil Law is not the Law of England, or adopted here; the Children have been christened as Legitimate — Cohab.n with Reputation is a presumption tho, no proper foundation of pleading the fact of Marriage; the Doctrine of Cohab.n is established here; if it had been pleaded, he had left her & denied the Marriage, it wd have created a stronger Presumption; we have one, it is not ousted —

Dr Wynne.... Cohabitation is a Presumption in favor of marriage; if they cd prove they did not live in the reputable manner we say, it might be material

Dr Hay. Judge.... The Ct always distinguishes between a Case of Jactitation & a Case of Interest, in the latter the proof in this Country is much more favorable; in a Case of Marriage inter vivos strict proof is requisite. By the Law of Scotland, Man & Woman by living together, are deemed married. In the Case of Mumford & Jefferson before Dr Andrew. A. instituted a Suit of Jactitation agt B, by whom he had several Children. B. pleaded a marriage, but cd not prove it, both Parties being alive, the Judge pronounced agt

* Conway's Case was in Jactitation; Sir Geo. Lee pronounced agt the Marriage, not only because he thought Reputation & Cohabitation insufficient in themselves in Causes of that kind, but because even they were not proved. I believe the Woman had been guilty of some management about obtaining a Register in the Fleet.

Who there was Children.... the Marriage & Cohabitation with general Reputation is a strong presumption in favor of Marriage — Here Cohab.n is proved at G. but not deduced to the Mans death; It is an antient Transaction so long ago as 1742. clandestine indeed, but such as at that time stood good; the Register was not Evidence & the Parties cd not be themselves examined; on the other hand, there is no Proof that such Marriage did not exist; the Management in this Cause is very extraordinary; it is true Parties may assume a Name to cover Turpitude, but after the death of one of the Parties where there is a Child who may be bastardized, a less degree of evidence is sufficient & the Register of the Baptisms is a strong presumption in favor of the Marriage, tho, in other respects the proof is very defective; no Evidence is given to oust this presumption, she has been possessed of the Admon some time, in wch they have acquiescd, upon the whole I am of Opinion the marriage is to be presumed, & that the Admon ought not to be revoked, do reject Mrs Morris's Prayer — I think the Bond shd have been introduced...

B. Appealed, but afterwards compromised....

Commissary of Surry 2 Sess: E. J.....

No 61. Mapletoft & others. v The Vicar, Churchwardens, & Pish.rs of Chertsey. — Faculty for erecting a Gallery..

Grene — Dr Wynne, Bever — Dr Calvert, Burrell — Collins —

Dr Wynne.... 19 May 1764 Citation issued agt the Vicar Ch: Wns & Pish.rs of Chertsey, to shew Cause why a Faculty shd not be granted to Pembroke Dundas Mapletoft & Blake, for erecting a Gallery in a Nook on the South side of the psh Church, 14 f: long & 4 f: broad & 9 feet above the Floor of the Seats underneath, & to confirm & appropriate 4 Sev.l Seats in such Gallery to them & their families during their Continuance in sd parish, In addition to the Prayer of the aforesd faculty, there was a Petition signd by Sir Jos.h Mawbey, the Ch: Wns & 20 of the Inhab.ts on the Return of the Intimation, an Appearance was given for Wm Whorlett one of the then Ch: Wns, In Harris Overseer & 17 Inhab.ts on whose behalf an Allon was given, to shew cause why the Faculty shd not be granted viz. that the Church was large enough to contain all the psh.rs who usually resorted to it; that the Seats where the Peb.rs were seated, were as good, as any in the Church; that the Gallery when erected wd darken the Pulpit & Pews underneath in Winter & heat them in Summer; that the Fabric is old & wd be greatly damaged thereby particularly the S. Wall; that at a meeting in Vestry May 3: 1764 held pursuant to Notice, it was agreed by the Majority of those who were present, that no Gallery shd be erected as prayd — that the Petit.rs are rated very little to Church Rates, Blake not at all; that the Opponents are wealthy psh.rs & pay 2/3 of the Rates of the psh; on this Plea 11 Wit.s a Carpenter, & a Surveyor have been exam.d In Answer to this, We have given an Allon, pleading that the Church is not large enough; that the Pet.rs never had any Pews appropriated to themselves & Families, who are obliged to others for their Seats; that the Pews underneath will neither be darkened or heated by the erection of sd Gallery, on ye contrary more light will be thrown into the Church by opening a Window that the Fabric, nor S. Wall will be endangered; that at the afd Vestry it was not agreed the Gallery shd not be erected, for that the Vicar, Ch: Wns & sev.l psh.rs of the greatest property did agree it shd; that they signed no Paper tho, the others did; We have exam.d Wit.s Masons & Workmen — Stephen Hunt Mason believes opening a Dormer Window, will not endanger the Roof, will give more light to the Pulpit & desk; the Pews under said Gallery will be a little darkened, but will have sufficient light to read by — the materials of the Wall will not be disturbd by letting in the Woodwork of the Gallery; the Wall will be rather strengthened thereby — Brown Bricklayer says the Wall will not be weakened; is sure the Pulpit, Reading Desk & Clerks Desk will receive more Light; the Gallery will rather help, than heat the Pews, because it will take off the Sun, wch will