

more modern times, it has been considered in its proper light, as a civil contract, as well as a religious vow, and, like all civil contracts, will be invalidated by want of consent of capable persons. *Turner v. Meyers*, 1 *Hag. Con. Rep.* 414; *Browning v. Reane*, 2 *Phill. Rep.* 69; *Shelf. Lun.* 59, 446; *Portsmouth v. Portsmouth*, 1 *Hag. Rep.* 355. It has been, most commonly, every where celebrated by some religious solemnities; and, from its nature and objects, has been held to be obligatory during the joint lives of the parties, without the power of being thrown off at the pleasure of either or both of them; *Gordon v. Pye*, *Fergusson's Rep. Append. note A*, 349; *Westmeath v. Westmeath*, 1 *Jac. Rep.* 183; except perhaps in the single instance, according to the ancient and now obsolete law, where the husband or wife with the consent of the other, become a monk or nun professed, whereby the contract of marriage was virtually dissolved. *Co. Litt.* 132.

According to the law of England, a contract of marriage is not deemed complete, so as to entitle the wife to dower, and the issue to inherit, unless it be celebrated in the face of the church, or with the blessing of a priest. *Dalrymple v. Dalrymple*, 2 *Hag. Con. Rep.* 54. In Scotland no religious ceremony is necessary to constitute a legal marriage; *Dalrymple v. Dalrymple*, 2 *Hag. Con. Rep.* 54; and in England, *during the time of the Commonwealth, marriage was allowed to be contracted before a justice of the peace. 4 *Bac. Abr.* 531, 536. In Maryland there was a time when marriage might have been legally contracted before a County Court or in the presence of a magistrate; 1702, ch. 1, s. 4; 1715, ch. 44, s. 25; but other provisions having been made upon the subject by the Legislature of the Province, 1717, ch. 15, and by the General Assembly of the State, February, 1777, ch. 12, it would now seem to be certainly the most correct, if not the only legal mode of contracting marriage, here as in England, by having it celebrated in the face of some church, or with the blessing of a clergyman.

In general it is sufficient to show, that a man and woman have cohabited as husband and wife; have represented themselves as such; or have been reputed in the neighborhood of their residence to have been legally married, to establish the fact of their marriage and the legitimacy of their children. The only exceptions to this rule are the cases of a prosecution for bigamy, and an action of criminal conversation, in each of which, proof of an actual marriage is necessary. For although the action of crim. con. is, in its form, properly a civil action, yet it is in the nature of a criminal prosecution; and if proof of cohabitation or reputation were received as alone sufficient evidence of the marriage, it would place it in the power of the parties to collude together and pass themselves off as husband and wife occasionally for the express purpose of profiting by such a suit. *Morris v. Miller*, 4 *Burr.* 2057; *Birt v.*