

land, during the time of the Commonwealth, marriage was allowed to be contracted before a justice of the peace.(g) In Maryland there was a time when marriage might have been legally contracted before a county court or in presence of a magistrate;(h) but other provisions having been made upon the subject by the legislature of the Province,(i) and by the General Assembly of the State,(j) 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 neighbourhood 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.(k) But although, in such cases, the mere general reputation of a marriage may not be deemed sufficient, yet it appears, that the deliberate admission of the defendant in an action of *crim. con.*, that the woman was the wife of the plaintiff; or the confession of the accused of the fact of the first marriage in a prosecution for bigamy, will even in those cases be received as sufficient to establish the fact of the marriage.(l)

In England the spiritual court has jurisdiction to inquire into the validity of a contract of marriage; and may, in certain cases, determine, that it is wholly void, or decree, that it be dissolved, and that the parties be divorced; but in all cases not falling within the jurisdiction of the ecclesiastical courts the parliament alone can grant relief.(m) In Maryland, there never having been an ecclesiastical court, and no power to grant a divorce, by annul-

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(g) 4 Bac. Abr. 531, 536.—(h) 1702, ch. 1, s. 4; 1715, ch. 44, s. 25.—(i) 1717, ch. 15.—(j) February 1777, ch. 12.—(k) *Morris v. Miller*, 4 Burr. 2057; *Birt v. Barlow*, Doug. 171.—(l) *Stark. Evi.* 4 pt. 36 & 1185.—(m) 4 Bac. Abr. 554.