

It is now universally admitted, that a husband and wife are utterly incompetent, of themselves, by any agreement of their own, to effect even a partial dissolution of the marriage contract; but they are allowed to agree to live apart; and as auxiliary to that agreement, if the husband stipulate, through the instrumentality of a third person, to allow and pay to his wife a separate maintenance, such a stipulation is legal; and may be enforced against the husband, either in a Court of law, or of equity; although it has originated out of and relates to that unauthorized state of separation in which the husband and wife have endeavored to place themselves. A separate maintenance of this kind and pin-money are alike in this respect, that they are founded on a special contract, and only payable during the marriage. Pin-money is given gratuitously for her personal and private expenditure; it is an allowance always payable during co-habitation; whereas a separate maintenance is that provision which a husband contracts to pay to his wife where they have agreed to live apart and is payable only during the period of separation; and in this respect differs from pin-money. The examination of a few of the decisions in relation to a separate maintenance of this description will be sufficient to shew what is considered to be its general character in the Courts of common law as well as in equity. *Raynes v. Lewes, Nelson*, 88; *Whorewood v. Whorewood*, 1 *Cha. Ca.* 250; *Head v. Head*, 3 *Atk.* 295; *S. C.* 3 *Atk.* 547; *Guth v. Guth*, 3 *Bro. C. C.* 614; *Legard v. Johnson*, 3 *Ves.* 352; *St. John v. St. John*, 11 *Ves.* 526; *Worrall v. Jacob*, 3 *Meriv.* 256; *Westmeath v. Westmeath*, 4 *Cond. Cha. Rep.* 56; *Rodney v. Chambers*, 2 *East*, 283; *Wallingsford v. Wallingsford*, 6 *H. & J.* 485.

* But in the case under consideration, there is nothing which can be construed as a contract on the part of the husband to pay to his wife anything as a separate maintenance. It is true, that they have, by an instrument of writing, agreed to live separate, and that he has released to her all claim to property, which he might have recovered as her husband; but he has not, in any manner, stipulated to provide for her a separate maintenance, and therefore, no adjudication in relation to the contract of a husband, for the separate maintenance of his wife, can be applied to, or need be considered in this case. **565**

A mere agreement of a husband and wife to live apart, does not of itself, and without any contract to that effect, afford any ground upon which she can sustain a claim for separate maintenance. But if, by the cruel or immoral conduct of the husband, the wife cannot with safety and in decency consort with him, then she may, upon the ground of such ill-treatment, come into a Court of equity, and have a separate maintenance assigned to her by the Court out of her husband's estate, of an amount proportioned to his means and circumstances.