

stand to be the rule in the English Ecclesiastical Courts, that alimony or a separate maintenance is never allowed but as a consequence of a divorce, *a mensa et thoro*. And that the Court of Equity there has no jurisdiction in cases of divorce, and will abstain from granting alimony until the separation of the parties has been decreed by the Ecclesiastical Court. This is not only the view of the subject taken by the late Chancellor in the case of *Helms vs. Franciscus*, 2 *Bland*, 565, but that of the Court of Appeals in *Crane vs. Meginnis*, 1 *Gill & Johns.*, 463. At page 474, the Court say, "That alimony is the maintenance afforded to the separated wife for the injury done her by her husband in neglecting or refusing to make her an allowance suitable to their station in life, and is treated as a consequence drawn from the divorce, *a mensa et thoro*." This the Court say is the conclusion to which they have come after a general review of the British law of divorce and alimony.

But by the Act of 1777, ch. 12, sec. 14, it is declared, "That the Chancellor shall and may hear and determine all causes for alimony in as full and ample manner as such causes could be heard and determined by the law of England in the Ecclesiastical Courts there." And it is urged, and I am not at all prepared to say that the argument is not a sound one, that this Act is still in force, and that the wife may not avail herself of its provisions, notwithstanding that under the Act of 1841, ch. 262, this Court, when granting a divorce, may as an incident thereto award her alimony. I do not suppose it was the intention of the Legislature in passing the latter Act, to compel the wife to sue for a divorce, whether she wished it or not. That is, that she must when abandoned or maltreated by her husband, either ask to have the sacred contract of marriage dissolved, or be denied the right to apply for a reasonable maintenance out of his estate to save her from suffering. She may have insuperable scruples against asking for the dissolution in whole or in part of a tie so solemn and sacred, and such scruples are certainly worthy to be respected, and when they exist deserve admiration rather than punishment. I therefore think, that in a proper case an application on the part of the