

The conflicting claims of this husband and wife present the next subject of inquiry, and the adjustment of them will require some care and attention.

According to our law, the marriage contract so strictly and intimately unites husband and wife, that they form, as it were, but one person; and in contemplation of law, the wife is considered as having scarcely any separate existence. The husband is the head, and therefore all the property of the wife belongs to him. This peculiar compact is of so lasting a character, that this court recognizes no power in the parties to vary the rights and duties growing out of it, or to effect, at their pleasure, any partial, much less a total dissolution of it during their lives; it is one by which the parties impose duties on themselves, and engage to perform duties with respect to their offspring; duties which are as much imposed for the sake of public policy as of private happiness; and which, therefore, they are never permitted to cast off at their pleasure. From these general principles it follows, that husband and wife are incompetent to contract with each other for the purpose of binding, or conveying property in any manner, directly from one to the other. And, having an inviolable right to the aid, comfort, and society of each other, they cannot separate or have any mere agreement between themselves for a separation, enforced by a court of common law or equity. (*k*)

But, although it is, in general, true, that husband and wife cannot, of their mere motion, dissolve the marriage contract, yet courts of law and of equity, without pretending to any authority either to sanction or enforce cohabitation or separation, will protect either party from the personal violence, or gross moral offence of the other; and, for that purpose, allow of, and even enforce a separation. This, however, is always done from necessity, and with a view to preserve the public peace, or to prevent the open contamination of the morals of society; as where a husband, indulging in a base, unmanly temper, was in the habit of beating his wife, or, with brutish feelings, introduced lewd women with her into his household. This *pro tanto* separation is not, however, an impeachment of that public policy by which marriage is regarded as so sacred and inviolable in its nature; it is merely a stronger policy over-ruling a weaker one; and except in so far only as such

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(*k*) Co. Litt. 112; Head v. Head, 3 Atk. 550; Worrall v. Jacob, 3 Meriv. 268; Westmeath v. Westmeath, 4 Cond. Chan. Rep. 60.