

or her separate property for the purpose of paying his debts or of otherwise forwarding his views; or she becomes his surety, as she may in respect to her separate property; a court of equity will order her to be re-imbursed out of her husband's property if any shall remain after his creditors have been satisfied. (*q*)

These and other instances which might be cited clearly shew, that a wife, during coverture, is not altogether so destitute of a capacity to contract respecting her property as is indicated by the general terms of the rule of the common law; but, that a husband and wife may, in particular situations, treat together effectually, if they treat upon fair and reasonable terms. (*r*)

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 endeavoured 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. (*s*)

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(*q*) *Huntington v. Huntington*, 2 Vern. 437; *Pocock v. Lee*, 2 Vern. 604; *Tate v. Austin*, 1 P. Will. 264; *Bagot v. Oughton*, 1 P. Will. 347; *Quarles v. Lacey*, 4 Mun. 258; *Gosden v. Tucker*, 6 Mun. 1.—(*r*) *Hobbs v. Hull*, 1 Cox, 445; *Arundell v. Phipps*, 10 Ves. 140.—(*s*) *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.