

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 any thing 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.

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.

There seems to have been some difficulty in England upon this subject; because it is said, of this claim's being founded upon the misconduct of the husband; and of the ecclesiastical courts having the exclusive cognizance of all matrimonial cases; and as the kind of separate maintenance called *alimony*, is never allowed, but as a consequence of a divorce *a mensa et thoro*, that therefore, a court of equity could not take cognizance of a claim for separate maintenance, founded only on the misconduct of the husband, until after a divorce *a mensa et thoro*, had been granted by the ecclesiastical court. The difficulty of the English court of equity, it is evident, arises from the claim for a separate maintenance of this kind, involving the question of divorce, of which it has no jurisdiction. But it is admitted on all hands, that under such circumstances, the wife ought to be relieved, and should be able to obtain relief somewhere.

In England, during the short existence of the Republic, after the decapitation of the first king Charles, the ecclesiastical courts were abolished; and, in consequence thereof, the entire jurisdiction in all cases of alimony and of separate maintenance, devolved, as a matter of course and necessity, upon the Court of Chancery, as the only tribunal fitted and competent to decide