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No. 101.

3rd Session, 5th Parliament, 20 Victoria, 1857.

BILL.

An Act to regulate the right of married women to dower or *préciput* in certain cases.

Received and read, first time, Thursday, 12th
March, 1857.

Second reading, Thursday, 19th March, 1857.

MR. ALLEYN.

TORONTO:
PRINTED BY JOHN LOVELL,
YONGE STREET.

An Act to regulate the right of married women to dower or *préciput* in certain cases.

WHEREAS doubts and difficulties have existed and do exist with respect to the right of married women, to have and obtain during the life time of their husbands either *douaire* or *préciput*, although in their marriage contracts the same may have been made payable upon the dissolution of their community by death or otherwise, (*par mort ou autrement*); and in cases which are of daily occurrence, wherein married women bring actions “*en séparation de biens*,” against their husbands by and with the privity and consent of their husbands, with the view of substracting the property of the community from the claims and demands of creditors of such husbands and great frauds under colour thereof are oftentimes practised;—For prevention whereof Her Majesty, &c., enacts as follows :

I. From and after the passing of this Act, neither *douaire* or *préciput* under any pretence whatsoever shall be adjudged to or paid to such married women during the life time of their said husbands, unless in the case hereinafter, provided for, namely, where such husband shall be held and considered in law as civilly dead, notwithstanding the ordinary stipulations in said marriage contract : thus “*arrivant la dissolution de la communauté de biens par mort ou autrement il sera loisible à la dite future épouse et aux siens de prendre tout ce qu’elle aurait apporté en mariage, en outre avec son douaire et préciput, bagues et joyaux, tels que stipulé,*” happening the dissolution of the community of property by death or otherwise, it shall be lawful for the future spouse and her representatives to take back all that she may have brought into the said community upon her marriage, and also her *douaire* and *préciput*, rings and jewels as stipulated”—or other words of like import.

II. Provided always, and it is further declared and enacted, that the only case in which either *douaire* or *préciput* shall or may be awarded during the life time of the husband, is that of a separation operated by reason of the husband being convicted of some crime or criminal offence for which he shall have been banished from the Province or imprisoned therein for life, such banishment or imprisonment constituting in law a civil death, (*mort civil*) upon which the woman’s rights shall and may attach and become available as though she had survived her husband he having died a natural death ; And provided further that nothing herein contained shall be held to deprive the woman in case of dissolution of the community by a judicial *séparation de biens*, from having and obtaining her *droits de reprise* which is not in law a right of survivorship.

III. The foregoing provisions of the present Act, shall by the several Courts of Justice in Lower Canada be held and considered not only as law applicable to cases arising from and after the passing of this Act, but to all suits or actions now pending and undetermined in all or any of the said Courts, in which such claim for *douaire* or *préciput* may be claimed or demanded, any law, usage or custom to the contrary notwithstanding.