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No. 44.

2nd Session, 6th Parliament, 22 Victoria, 1859.

BILL.

An Act to secure to Married Women certain separate rights of property.

As passed by the Legislative Council.

[Printed by Order of Legislative
Assembly.]

S. Derbshire & G. Desbarats, Queen's Printer.

BILL.

[As passed by the Legislative Council.]

An Act to secure to Married Women certain separate rights of property.

WHEREAS the law of Upper Canada relating to the property of Married Women is frequently productive of great injustice, and it is highly desirable that amendments should be made therein for the better protection of their rights : Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

1. Every woman who shall marry after the passing of this Act without any marriage contract or settlement, shall and may, notwithstanding her coverture, have, hold and enjoy all her personal property, whether belonging to her before marriage, or acquired by her after marriage, and also all her personal earnings and any acquisitions therefrom, free from the debts and obligations of her husband and from his control or disposition without her consent, in as full and ample a manner as if she continued sole and unmarried, any law, usage or custom to the contrary notwithstanding ; provided that this clause shall not extend to any property received by a married woman from her husband during coverture.

2. Every woman already married without any marriage contract or settlement, shall and may, from and after the passing of this Act, notwithstanding her coverture, have, hold and enjoy all her personal property not already reduced into the possession of her husband, whether belonging to her before marriage or acquired by her after marriage, and also all her personal earnings and any acquisitions therefrom not already reduced into the possession of her husband, free from his debts and obligations contracted after the passing of this Act, and from his control or disposition without her consent, in as full and ample a manner as if she were sole and unmarried ; any law, usage or custom to the contrary notwithstanding.

3. Provided always that nothing herein contained shall be construed to protect the property of a married woman from seizure and sale on any execution against her husband for her torts ; and in such case, execution shall first be levied on her separate property.

4. The interest acquired by marriage of a man in the real estate of his wife shall not, during her life, be subject to execution on any judgment against him.

5. Every married woman having separate property, whether real or personal, not settled by any ante-nuptial contract, shall be liable upon any separate contract made or debt incurred by her, before marriage, to the extent and value of such separate property, in the same manner as if she were sole and unmarried.

6. Every husband who takes any interest in the separate real or personal property of his wife, under any contract or settlement on marriage, shall be liable upon the contracts made or debts incurred by her before marriage, to the extent or value of such interest only, and no more.

7. Every married woman may make any devise or bequest of her separate property, real or personal, or of any rights therein, whether such property be acquired before or after marriage, to or among her child or children issue of any marriage, and failing there being any issue, then to her husband, or as she may see fit, in the same manner as if she were sole and unmarried; Provided that such devise or bequest be executed in the presence of two or more witnesses, neither of whom shall be her husband, and that her husband shall not be deprived by such devise or bequest of any right he may have acquired as tenant by the curtesy.

8. A married woman shall not be liable to arrest either on mesne or final process.

9. The separate personal property of a married woman dying intestate shall be distributed in the same proportions between her husband and children as the personal property of a husband dying intestate is or shall be distributed between his wife and children; and if there be no child or children living at the death of the wife so dying intestate, then such property shall pass or be distributed as if this Act had not been passed.

10. In any action or proceeding at law or in equity, by or against a married woman, upon any contract made or debt incurred by her before marriage, her husband shall be made a party if residing within the Province, but if absent therefrom, the action or proceeding may go on for or against her alone; and in the declaration, bill or statement of the cause of action, it shall be alleged that such cause of action accrued before marriage, and also that such married woman has separate estate; and the judgment or decree therein, if against such married woman, shall be to recover of her separate estate only, unless in any action or proceeding against her, in which her husband has been joined as a party, any

*Will this not clash
with the antenuptial
law of wills -*

false plea or answer has been pleaded or put in, when the judgment or decree shall be, in addition, to recover against him the costs occasioned by such false plea or answer, as in ordinary cases.

11. Nothing in this Act contained shall be construed to prevent any ante-nuptial settlement or contract being made in the same manner and with the same effect as such contract or settlement might be made if this Act had not been passed ; but notwithstanding any such contract or settlement, any separate, real or personal property of a married woman, acquired either before or after marriage, and not coming under or being affected by such contract or settlement, shall be subject to the provisions of this Act, in the same manner as if no such contract or settlement had been made ; and as to such property, and her personal earnings and any acquisitions therefrom, such woman shall be considered as having married without any marriage contract or settlement.

12. This Act shall apply only to Upper Canada.