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11-114.  
1st Session, 6th Parliament, 21st Victoria, 1858.

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**B.**

**BILL.**

An Act to secure to Married Women certain  
separate Rights of Property.

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Received and read first time, Wednesday, 3rd  
March, 1858:

Second reading, Thursday, 15th April, 1858.

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(500 copies.)

Hon. Mr. J. MORRIS.

TORONTO:—LEADER STEAM PRESS PRINT.

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## BILL.

### An Act to secure to Married Women certain separate rights of Property.

**W**HEREAS the law of Upper Canada relating to the property of Preamble.  
Married Women is frequently productive of great injustice, and it  
is highly desirable that amendments should be made therein for the bet-  
ter 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:

I. 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 belong-  
ing 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.

Women marry-  
ing hereafter  
without settle-  
ments to enjoy  
their personal  
property free  
from control by  
husbands.

II. Every woman already married without any marriage contract or  
settlement shall and may, from and after the passing of this Act, notwith-  
standing 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 con-  
tracted 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.

Women hereto-  
fore married  
without settle-  
ments to enjoy  
certain portions  
of their personal  
property, &c.,  
free from control  
by husbands.

III. 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.

Proviso.

IV. The real estate of a married woman shall not, during her life, be  
subject to execution on any judgment against her husband, on account of  
any interest he may have acquired in such real estate as tenant by the  
curtesy.

Wife's real estate  
not to be liable  
by reason of hus-  
band's tenancy  
by the curtesy.

Married woman having separate property liable to the extent thereof for her debts and contracts before marriage.

V. 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.

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Husband liable for wife's debts, &c., contracted before marriage to the extent of his interest in her separate property.

VI. 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.

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Married women may make devises or bequests of their separate property.

VII. 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.

Provide.

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Married women not liable to arrest.

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

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Distribution of separate personal property of married woman dying intestate.

IX. 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.

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Husband to be made party to action against wife upon her debt or contract before marriage, only if in the Province—what to be alleged in Bill or Declaration—tenor of judgment or decree, &c., &c.

X. 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 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 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.

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Ante-nuptial contracts or settlements to be good for what they affect, but beyond that woman to be deemed to have married without.

XI. 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

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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  
 5 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.

XII. The term "Separate Property" in this Act shall extend, and <sup>Interpretation.</sup> apply to all property in any manner acquired by a married woman either  
 10 before or after her marriage ; and the term, "Tenant by the curtesy," shall extend and apply to the interest that a husband has in his wife's real estate, during her lifetime.

XIII. This Act shall apply only to Upper Canada.

Application.