COURT OF APPEAL.

IN RE MACKLEM AND THE COMMISSIONERS OF THE NIAGARA FALLS PARK.

Construction of will—Forfeiture—Vis major—Expropriation.

T. C. S. devised his estate of Clark Hill with the islands, lands and grounds appertaining. M.'s grandmother, by her will, directed her executors to pay him $2,000 a year so long as he should remain the owner and actual occupant of Clark Hill, "to enable him the better to keep up, decorate and beautify the property known as Clark Hill and the islands connected therewith."

Held, that the expropriation, under an Act of the Legislature, of part of the Clark Hill estate, did not in any way affect M.'s right to this annuity; and therefore in awarding compensation to M. for the lands expropriated the arbitrators properly excluded the consideration of a contemplated loss by M. of this annuity.

A failure by M. to reside and occupy would be in the nature of a forfeiture for breach of a condition subsequent, and his right to the annuity would continue absolute until something occurred to divest the estate which must be by his own act or default; the *vis major* of a binding statute could not work a forfeiture.

Upon the evidence the court refused to interfere with the amount of compensation awarded.

Irving, Q.C., for the Park Commissioners.

Robinson, Q.C., and *Street*, Q.C., contra.

CHANCERY DIVISION.

Boyd, C.] [Nov. 4, 1886.

DAWSON V. MOFFATT ET AL.

C. S. U. C. c. 73—Marriage settlement—Wife's after acquired personal property.

It is evident from the scope of C. S. U. C. c. 73, that notwithstanding any marriage settlement, any separate personal property of any married woman acquired after marriage, and not coming under or being affected by such settlement, shall be subject to the provisions of the Act in the same manner as if no such settlement had been made, and as to such property the married woman shall be considered as having married without a settlement.

W. Nesbitt, and *F. C. Moffat*, for the wife.

C. L. Ferguson, for husband's creditors.

Ferguson, J.] [January 8.

HYMAN V. HOWELL.

Assignment for creditors—Costs of attacking a fraudulent preference—Making good to the estate moneys spent on useless legal proceedings.

W., on March 7th, 1884, assigned all his estate by deed to B., himself a creditor of W., on trust for the creditors of W.

On March 18, 1884, at a meeting of creditors held by B., it was resolved with B.'s consent that M., an execution creditor of W., should bring an action on behalf of all the creditors of W., to contest the validity of a certain chattel mortgage made to H. & Co. by W., prior to the above assignment to B. M. accordingly brought the action, the costs of which the creditors agreed should be borne by the estate. H. & Co. were not present at the meeting. The action was dismissed with costs, and B. paid the defendants H. & Co.'s costs of that action, and also the costs of the solicitor who acted for M., out of the moneys of the estate, $462 in all.

H. & Co., being large creditors of W., now brought this action, asking that the executors of M. should pay the $462 to B. to be distributed among the creditors of W.

There was no evidence of M. or his executors having requested B. to pay the $462 of costs.

Held, that as to the $300 costs paid to M.'s solicitor, no request on M.'s part to B. to pay this to the solicitor could be implied, for M. did not retain the solicitor or manage the proceedings, but merely allowed his name to be used as plaintiff, because it was thought the action could not succeed with B. as plaintiff, and M. was not liable to the said solicitor as to those costs, and therefore the plaintiffs failed as to their sum.

Held, also, that the plaintiffs could not succeed as to the balance, $162, for there could be no reasonable doubt that they knew these