and that the selection made in accordance with the Provincial Acts was valid.

Irving, Q.C., for the Crown.

Murphy, for the prisoner.

HEWSON V. MACDONALD.

Release of action—Notice of trial, after—Setting aside appeal to Divisional Court—O. J. Act Rule 414.

In an action for work done and materials provided, etc., to which the defendant pleaded never indebted and payment. On the cause coming on for trial, a settlement was effected by the defendant paying the plaintiff $2,500, and receiving a release from the plaintiff, expressed in the most general terms, to be in full of all demands. Subsequently the plaintiff—without having repaid the $2,500, and having refused to do so on the defendant's offering to give up the relsase if he would repay the money, contending that the said money payment was not the whole consideration for the release, but that the plaintiff, in addition, was to receive an appointment in the Civil Service worth $2,000 a year—gave notice of trial for the next assizes. The defendant thereupon applied to the Master in Chambers to set aside such notice, and stay all proceedings on the ground of the release being in settlement of all demands, or to let in the defendant to plead the said release; and the Master made an order setting aside the notice. The plaintiff appealed to Mr. Justice Armour, in Chambers, who, on the 11th April, made an order setting aside the Master's order, and permitting the defendant, but on that day, to plead the release, with leave to the plaintiff to reply, and directing the case to be entered for trial at the Assizes, on 17th April following. This order was taken out by the defendant and the release pleaded, and the case subsequently entered for trial and afterwards withdrawn. In Easter term following the defendant moved by way of appeal, against Mr. Justice Armour's order.

Held, that under the O. J. Act, rule 414, it was not essential that the appeal should be made within eight days from the making of the order on the time calendar.

Held also, that the defendant, by taking out Mr. Justice Armour's order and taking a benefit under it, would, according to the general rule and practice, be precluded from moving against it.

Held, however, that he could do so in this case because it was quite unnecessary to make it, as the plaintiff refused the defendant's offer to repay the money and get back the release, and it was not supportable in law, because the plaintiff, not having paid back the money, was not in a position to repudiate the release, and at the trial would be stopped from doing so; and also that the additional consideration set up being illegal, and the plaintiff being *particeps criminis*, he could not avail himself of it to defeat the release.

Held also, that the evidence showed that the defendant never agreed to any such alleged promise.

McMichael, Q.C., and *Ogden*, for the plaintiff.

McCarthy, Q.C., and *Marsh*, for the defendant.

CHANCERY DIVISION.

Proudfoot, J.] [June 6.

LAVIN V. LAVIN.

Conveyance by husband to wife.

The conveyance by a husband to his wife, even of all his property, has never been deemed to infringe any rule of public policy unless where it offends against the Statutes of Elizabeth, or the bankruptcy or insolvency laws. Post-nuptial settlements, like all other voluntary transactions, are valid and binding, so far as the parties are concerned, and can only be impeached as fraudulent as against others. Nor can such a settlement be less efficacious because the wife is to hold for the benefit of herself and the children. That is only another mode of carrying out the husband's duty to maintain and provide.

W. Cassels, for the plaintiff.

Bethune, Q.C., for the defendant.

Proudfoot, J.] [June 6.

MARTIN V. MCALPINE.

Fraudulent preference—Pressure—R.S.O. c. 118.

The bill in this case was by one execution creditor impeaching a judgment obtained upon a cognovit given by the defendant Farrell to the defendant McAlpine, another execution creditor, as offending against the act respecting the fraudulent preference of creditors, R.S.O. c. 118.

Held, inasmuch as the cognovit was not voluntarily given, but was the result of clear pressure