read with the previous provisions of the Act, and I think it may be satisfied by restricting the appeal as respects the special case, which is to be the form of appeal by the 15th section, and as respects the amount. The notice and security under the 14th section are more in the nature of procedure and practice, and are solely for the benefit of the respondent in the appeal, the public not being interested in them. If so the case falls within the general rule that a party may waive what has been provided for his own benefit and protection; and so is within the principle of *Graham* v. *Ingleby* (*loc. cit*). In appeals under Jervis' Act it has been held that when certain provisions have not been complied with the court has no jurisdiction. But some of those cases were strictly of a criminal nature, and in the others the proceedings were in the nature of criminal proceedings. The rule must therefore be discharged.

Keating, J.—I entirely agree that if the objection taken could be waived, it has been waived; but I doubted in the course of the argument, and I still very strongly doubt, how far the Act of Parliament can be read as the Chief Justice has read it, viz., how far the 16th section can be confined to the statement of a case, and the amount. The court can have no jurisdiction to hear this appeal but by the provisions of the act, for the policy of the Legislature is that the county court judge should hear, and finally hear, these cases. No doubt the notice and the security are for the benefit of the litigant party; but at the same time our jurisdiction to hear the appeal entirely depends on the 14th and 15th sections; and then follow the very strong words contained in the 16th section, "that no judgment, &c., shall be removed . . . into any other court whatever, except in the manner"—if it had stopped there, I might have doubted how far the section might not be confined to the form of the case and the amount; but it goes on—"and according to the provisions hereinbefore mentioned." It was argued, and I think with great force, that there "provisions" must include the notice and the security. The rest of the court, however, clearly think otherwise, and therefore I am not disposed to dissent from their judgment.

Smith, J.—If the objection that there was no notice and no security goes to the jurisdiction of the Court, it cannot be waived; but if the condition is entirely for the benefit of the respondent it can be waived. No doubt there was sufficient evidence that it was waived here if it could be waived, and the question is entirely whether it could.

The reasonable construction of the 14th, 15th, and 16th sections is, that the provisions requiring notice to the party and security to the party, are entirely for his benefit, with which no public interest is mixed up, and that according to the ordinary maxim he may renounce them. No doubt the words of the 16th section are strong: "manner" relates to the mode of stating and sending up the case, things in which the court is interested to see that its practice is properly carried out; the other provisions are solely and entirely in the interest of the respondent, and therefore, though the words of the section are negative, they may as regard procedure be read as confined to procedure. At first sight the cases on 20 and 21 Vict. c. 43, seem to have a considerable analogy; but they are distinguishable on the ground that they relate to proceedings in the nature of criminal proceedings, in which a party cannot waive what the law directs. In *Morgan* v. *Edwards*, though the court thought they had no jurisdiction, they threw out a suggestion that in certain cases where the appellant had done all he could to comply with the act he might be entitled to have the appeal go on.

Brett, J.—I think there was a clear waiver in fact. If the notice and security are essential to the jurisdiction of the court to hear the appeal, it is clear they cannot be waived; but if they are a mere mode of procedure, and the enactments are simply in favour of the respondent, and if non-compliance with them would be no detriment to the public, then they can be waived. On the affirmative provisions of the act, I think the conditions of notice and security are entirely in favour of the respondent, and do not go to the jurisdiction but to procedure; but then there is the negative section, and the question is whether that is not expressed in such wide terms as to include the previous provisions. I think that it does not, and that it has no relation to matters of procedure for the benefit of the respondent, and in which the public has no interest.

Rule discharged.

CHANCERY.

Freeman v. Pope.

Voluntary Settlement—Intent to delay, hinder, or defraud creditors—Statute 13 Eliz. c. 5—Creditor subsequent to date of settlement.

In order to set aside a voluntary settlement under the statute 13 Eliz. c. 5, it is not necessary to show that there was in the mind of the settler an actual intent to defraud his creditors. It is enough to show that the necessary result of the execution of the settlement was to prevent the creditors getting payment of their debts.

Where a man, by making a voluntary settlement, renders himself insolvent, a creditor whose debt was contracted after the execution of the settlement has a right to file a bill to set it aside if any debt which existed at the date of the execution of the settlement remains unpaid.

The *dictum* of Lord Westbury in *Spirett* v. *Willows*, 13 W. R. 329, 3 De G. J. & S. 302, that "if the debt of the creditor by whom the voluntary settlement is impeached existed at the date of the settlement, and it is shown that the remedy of the creditor is defeated or delayed by the existence of the settlement, it is immaterial whether the debtor was or was not solvent after making the settlement," considered as an abstract proposition, went too far. Decision of James, V. C., 18 W. R. 399, affirmed, but on different grounds.

[18 W. R. 906.]

This was an appeal by the defendant, the Rev. George Pope, from a decree of Vice-Chancellor James, setting aside as fraudulent and void as against creditors a voluntary settlement executed by the Rev. John Custance on the 3rd of March, 1863. The hearing of the cause before the Vice Chancellor is reported *ante*, p. 399, but in consequence of the judgment of the Court of Appeal being based on different grounds from that of the Vice-Chancellor, it is necessary to state the facts somewhat more fully than they are stated in the previous report.

By the settlement in question, Mr. Custance assigned to trustees a policy of insurance for