

assured "that no railway passes through the lot on which said lumber is piled, or within 200 feet."

*Held*, that a railway partly constructed and hauling freight through the said lot, though not authorized to run passenger cars and do general business, is a "railway" within the meaning of the warranty.

A condition of the policy was that if the subject of insurance be personal property, and be, or become encumbered by a chattel mortgage, it should be void.

*Held*, per DUFF, J. A security receipt under the Bank Act given to a bank for advances is not a chattel mortgage within the meaning of this condition.

Appeal dismissed with costs.

*Hazen*, K.C. and *F. Taylor*, for appellants. *Teed*, K.C. and *Fairweather*, for respondents.

N.S.]

IN RE McNUTT.

[Dec. 13, 1912.]

*Habeas corpus*—*Supreme Court Act*, s. 39(c)—*Criminal charge*  
—*Prosecution under Provincial Act*—*Application for writ*  
—*Judge's order*.

By sec. 39(c) of the Supreme Court Act an appeal is given "from the judgment in any case of proceedings for or upon a writ of habeas corpus . . . not arising out of a criminal charge."

*Held*, per FITZPATRICK, C.J., and ANGLIN, JJ., that a trial and conviction for keeping liquor for sale contrary to the provisions of the Nova Scotia Temperance Act, are proceedings on a criminal charge and no appeal lies from the refusal of a writ of habeas corpus to discharge the accused from imprisonment on such conviction. DUFF, J., contra. BRODEUR, J., hesitante.

By the Liberty of the Subject Act of Nova Scotia on application to the court or a judge for a writ of habeas corpus an order may be made calling on the keeper of the gaol or prison to return to the court or judge whether or not the person named is detained therein with the day and cause of his detention.

*Held*, per IDINGTON and BRODEUR, JJ. that such order is not a proceeding for or upon a writ of habeas corpus from which an appeal lies under said sec. 39(c). DUFF, J., contra.

Mr. JUSTICE DUFF, held that an appeal would lie in this case but that it must fail on the merits.

Appeal quashed without costs.

*Power*, K.C., and *Vernon*, for appellant. *Ralston*, contra.