tinued to reside on the land, and have been in possession ever since. On 1st November, 1892, the plaintiff's testator, in the alleged exercise of the power of appointment, executed a deed conveying the lands to one "B," who then re-conveyed to him; and on the 19th March, 1897, an action was brought to recover possession.

Held, that the effect of the deed of 25th October, 1870, was to vest the fee simple in the lands in the grantees to uses subject to be divested on the exercise of the power of appointment, and that the deed of November, 1892, was a due execution thereof; that the testator's estate, prior to the appointment, was a future estate or interest within the meaning of s. 5, s-s. 11, of the Real Property Limitation Act, R.S.O. (1879), c. 133, and he had five years from the execution of the deed to bring his action and the plaintiff was therefore entitled to recover.

Aylesworth, Q.C., for plaintiff. *E. D. Armour*, Q.C., for defendant.

Divisional Court.] TAYLOR *v.* SCOTT. [Feb. 17.

Habeas corpus—Issue by judge of High Court—Non-appeal from judgment—Final.

A person confined or restrained of his liberty is limited to one writ of habeas corpus, to be granted by a judge of the High Court, returnable before himself, or before a Judge in Chambers or before a Divisional Court, with a right of appeal to the Court of Appeal, whose judgment is final and conclusive; and where no such appeal is taken, the judgment, which might have been appealed against, becomes final and conclusive, and no other writ of habeas corpus can issue in the matter. Judgment of MACMAHON, J., affirmed.

Boultbee, for the appellants. *H. E. Jones*, contra.

Divisional Court.] ZIMMERMAN *v.* KEMP. [Feb. 21.

Principal and surety — Proof required against surety — Administration bond.

The plaintiff, having an unsatisfied judgment against the administratrix of an estate, procured an assignment of the administration bond, and brought an action thereon against the sureties, when W., who had indemnified the sureties, was made a third party, under an order whereby the question of his indemnity was to be tried after the trial of the action, as the judge might direct, with liberty to him to appear by counsel and defend the action, and to call and cross-examine witnesses, and that he should not thereafter be at liberty to dispute the defendant's liability, if any, to the plaintiff. At the trial the judgment was put in, and one of the defendants called as a witness, who stated that the amount of the judgment was correct. W. objected that the liability had not been properly proven as against him, and there should be a reference to