

his own name, and stocks were bought on margin and large losses ensued, this vitiated the guarantee and absolved the guarantee company from liability.

*W. K. Cameron and Maxwell*, for plaintiff. *J. B. Clarke*, K.C., and *Crothers*, for defendants.

Anglin J.]

KING v. WHITESIDE.

[July 28.

*Habeas corpus—Arrest in outside county—Omission to have warrant backed—Crim Code ss. 505, 848—Right to discharge—Reference of argument to Divisional Court—No power to direct—Jud. Act, s. 81.*

The prisoner had been convicted by the police magistrate of Bowmanville of a violation of the Liquor License Act, by the sale of liquor without a license, and, it being a second offence, was sentenced to imprisonment in the common gaol of the united counties of Northumberland and Durham for a term of four months at hard labour.

On the motion for his discharge from custody on the ground that the warrant of commitment had been executed by a constable of the adjoining county of Ontario without a backing having been first procured, it was held, disapproving of *Reg. v. Jones*, decided by Robertson, J., in 1888, that a prisoner could not be released from gaol on habeas corpus for mere irregularity in the caption the warrant returned to the writ showing a valid cause of detention, and that imprisonment wrongful in the manner of the taking would, so far as relief under habeas corpus was concerned, only be vitiated where it was directed by civil process. (2) That by reason of a difference of opinion between two judges of co-ordinate authority the matter should be referred to a Divisional Court.

Sept. 20.—Upon a direction being asked from the Divisional Court (Meredith, C.J., Idington, J., Magee, J.,) as to the above reference, it was held that the jurisdiction of the Court on habeas corpus was purely statutory, and was limited to a case where the writ had been made returnable before it, instead of a Judge in Chambers.

*J. W. McCullough*, for the prisoner. *Cartwright*, K.C., for the Crown.

Idington, J.]

KING v. WHITESIDE.

[August 4.

*Habeas corpus—Remand of prisoner to custody—Application for bail—Hab. Cor. Act, R.S.C. c. 83, ss. 1, 4.*

The prisoner, confined in gaol, as shown in *King v. Whiteside* above, applied to the presiding judge in chambers, by leave of the judge hearing the motion, for his discharge, to be released on bail pending the argument of the reference directed by him to be made.

*Held*, that, either the Judge seized of the motion or the Divisional Court was vested with power to bail, the case being one of a commitment in execution.