

agent. Two men, respectively of the name of Mulvahille and Paxton, were examined by the plaintiffs, and they state that they had a conversation with the defendants in jail. They say the defendants admitted they were the robbers of the bonds, and described, moreover, how the robbery was committed, and that they had the bonds *safely planted here in Canada*.

To this testimony I attach but little importance; it is extremely improbable, and the statements therein made contradict, in some particulars, the evidence of Macdonald, and so far it is unworthy of credit—it may be true or not. In any case, for the purposes of this decision, even admitting it to be true, I do not regard it as material. The remarks, however, of the defendants to Mr. Routh, taken in connection with certain other portions of the evidence adduced, leave no doubt in my mind of the robbery, or by whom it was perpetrated. As I view the testimony, therefore, I find it proved that the defendants abstracted the bonds in question from the plaintiffs' safe in New-York on the 10th December, under the circumstances stated by Mr. Macdonald. On that day they became illegally possessed of this property against the will of plaintiffs, and the probability is they have the bonds still in their possession, or under their control. It is also proved that they refused to restore them to the plaintiffs, or to disclose where they are, so that the plaintiffs might revendicate them, and upon these grounds mainly, if not exclusively, and under these circumstances, the plaintiffs had recourse to the remedy by "*Capias ad respondendum*."

Now, as to the right of action in this case against the defendants, as before stated, there can be no doubt, and it was also conceded by all the Counsel, except one, Mr. Robertson, for the defendants, that had this robbery been perpetrated in Canada, the remedy by *Capias* would be a proceeding sanctioned by the law. Upon this point I have no opinion to give, and I studiously abstain from pronouncing any judgment in regard to this view of the law. But there is something more in this case, and that which gives rise to the whole, or at least the chief difficulty. I have to decide whether the robbery, the conversion, and

first detention of the bonds, having occurred without the limits of Canada, and within the dominions of a foreign State, the defendants are, under our law, upon their refusal to restore the bonds, and their continued and fraudulent detention of them here, liable to imprisonment under *Capias*.

That is the real question to be determined in this case. The clause of the Statute invoked by the defendants, in relation to this point, is to the following effect: It has been quoted in part above, but is reproduced here in order that we may not lose sight of the law we are called upon to interpret and apply. "The Court, or any Judge of the Court, whence any process has issued to arrest any person, may either in Term or in Vacation, order such person to be discharged out of custody, if it is made to appear on summary petition and satisfactory proof, either that the defendant is a priest or a minister of any religious denomination, or is of the age of seventy years or upwards, or is a female, or that the cause of action arose in a foreign country, or does not amount to forty dollars of lawful money of this Province, or that there was not sufficient reason for the belief that the defendant was immediately about to leave the Province with fraudulent intent, where that is the cause assigned for the arrest, or that the defendant had not secreted, and was not about to secrete, his property with such intent, where that is the cause assigned for such arrest."

This Statute, though enacting general rules and provisions, applicable to arrest under civil process, it will be seen also clearly enumerates the exceptions, among which is found the case of the *cause of action arising in a foreign country*; and I have simply to determine what, in the present instance, is the cause of action, according to the technical meaning of the words, and where that cause of action arose. The clause of the Statute above cited settles the rest. Now, according to the plaintiffs' own showing, they lost possession of their property by theft or robbery, on the 10th December last, in the City of New-York. I think they have also established that the defendants are the robbers—that they fled immediately to Canada,—that they detained the bonds,