Montreal, the secreting, the demand to restore, and the refusal, all prove the conversion here, and consequently as the conversion is the gist of the action, the cause of action arose here. I, on the other hand, pretend that when there is a wrongful taking, followed by a carrying away of the goods of another who has the right of immediate possession, that is of itself a conversion. 1 Chitty on Pleading, 153. Thus in cases of larceny where the property is removed by the thief, there is an immediate conversion of it. Conversion does not necessarily import an acquisition of property in the party converting. In this case, taking it for granted that the bonds were stolen in New York, the conversion by the defendants took place there on their removing the bonds from the office of the plaintiffs. A demand to restore and refusal are only necessary to establish the conversion in cases where the defendant became, in the first instance, lawfully possessed of the goods, and the plaintiff cannot prove some distinct conversion. Chitty, pp. 156, 157—P. No. 1 (2). For instance in cases of loan or bailment, a demand to restore and refusal are necessary if the lender or bailor cannot show a distinct conversion; but if such distinct conversion is shown there is no necessity for the demand and refusal. In England, then, under the authority cited, the conversion would be held to have taken place at New York. Moreover, why, if the larceny at New York is mere matter of inducement, did the learned counsel insist upon their having so clearly proved that the defendants were the parties who there effected that larceny? Why, if that larceny is a mere matter of inducement, producing no effect upon the case, were they forced to admit that without the evidence of that larceny in New York, given under the commission, the defendants would have been entitled to their discharge, Mr. Routh's affidavit having been destroyed? By the destruction of the affidavit as proof of the defendants' indebtedness, the capias is left without any basis to support it. The plaintiffs have no right with their evidence in reply to satisfy the Court of that which should have been proved by the affidavit. My conclusions are, 1, that Mr. Routh's affidavit on the subject of the defendants' indebtedness has been destroyed, and that it cannot be bolstered up by evidence in reply. 2. That the larceny or wrongful taking in New York on the 10th December last is the cause of action in this case; that it arose in a foreign country; and that, consequently, the defendants are entitled to their discharge.

February 26.

MONK, J. This case has been brought up on two petitions to liberate the defendants from imprisonment, under a *capias ad respondendum*, issued at the instance of the plaintiffs on the affidavit to hold to bail, made by Mr. Routh, and which sets forth in substance:

(Here his honor read the affidavit, which will be found ante, p. 189.)

This affidavit was made on the 20th Dec. On the 26th of the same month the defendants appeared separately, and severally moved to quash because the affidavit did not disclose any legal and sufficient grounds of debt against the defendants, and that the cause of action did not arise within this Province.

Judge Berthelot dismissed both the motions, holding that the defendants were rendered liable by the fact of their being found here with the property in their possession; the owner of stolen property had a right of action against the thief wherever he found him with the stolen property in his possession. In this case it was not material whether the property was stolen here or in New-York.

In this decision of the learned Judge, I entirely concur, both as to the sufficiency of the affidavit *per se*, and as to the right of action against the thief wherever he may be found; nor did I understand the defendants' counsel, in the present instance, to contest very strenuously the right of action merely. I understood them to concede the point, and in any case, I entertain no doubt about the law in that respect. The question here, however, is not as to the right of action, but as to the right of arrest and detention under a writ of *capias ad respondendum*, in the face of the facts proved on these petitions. Keeping this distinction clearly in view, I proceed now to inquire into the merits of the defendants' applications.

Chapter 87 of our Consolidated Statutes provides that "The Court, or any Judge of