

and securities and the said debt (the value thereof as aforesaid) will be wholly lost to the plaintiffs.

"The deponent saith that without the benefit of a writ of *cap. ad resp.* against the bodies of the defendants, and a writ of attachment, *saisie-arrêt*, for the purpose of seizing and attaching such moveable estate, and effects as may be in the possession of the defendants, the plaintiff will lose said bonds and certificates and said debt (the value thereof as aforesaid) or sustain damage."

This affidavit was made Dec. 20. The defendants appeared separately, and (Dec. 26) severally moved to quash. The motions, which were identical in terms, were to the following effect:

"That the writ of *cap. ad resp.* issued in this cause be set aside and quashed with costs, and the said defendant released from the custody of the Sheriff for the following amongst other reasons:

"1st. Because the affidavit does not disclose any legal and sufficient grounds of debt against the said defendants for which a writ of *capias* could by law be issued.

"2nd. Because it appears from the said affidavit that the said bonds and securities alleged to be the property of the plaintiffs, were obtained at New York on the 10th December instant, and by reason thereof, notwithstanding the illegal holding thereof at Montreal, no writ of *capias* can be issued for or by reason of such illegal holding, because the cause of action did not accrue or arise, and is not alleged to have accrued or arisen, within this district or within this Province.

"3rd. Because even if the said bonds were illegally obtained and held by the defendants, the defendants cannot be held indebted to the plaintiffs in the value of said bonds or securities as alleged in the said affidavit, and were only liable on a special action in damages (which damages are not alleged), or criminal-ly, in case a criminal offence was committed.

"4th. Because the said affidavit and the grounds and reasons in said affidavit set up, are wholly insufficient, and ought so to be declared, and the affidavit set aside, and writ quashed."

Mr. A. Robertson, Q. C., for the defendant Griffin. The motion to quash is based on the ground that it is not disclosed in the affidavit where the cause of action arose, and because it appears indirectly from the reasons stated in support of the affidavit that the cause of action arose in New York, out of the Province of Canada. Now, it was held by the Court of Appeals in *Bottomley and Lumley*, 13 L. C. R. 227, that a party arrested under a *capias* will be discharged, if it be proved that the cause of action arose in a foreign country. The illegal holding of property in Canada is not ground for a *capias*. The plaintiffs should have seized their property by action *en revendication*, or brought an action of damages, or instituted a criminal prosecution.

Mr. Kerr, for the defendant Knapp. The affidavit ought to disclose where the debt was contracted, in order that the Court may be certain that the cause of action, that is, the whole cause of action, arose in Canada. In the present case, so far from the affidavit disclosing that the cause of action arose here, it appears indirectly that the cause of action arose in the State of New York, where the alleged *délit*, the abstraction of the bonds, was committed. The mere holding of the bonds at Montreal may be ground for an action, but not for a *capias*.

Mr. Bethune, Q. C., for the plaintiffs. The defendants would have brought their pretensions before the Court in a more correct form by a petition on which the parties could go to proof. They cannot succeed on a mere motion alleging informality in the affidavit, because the affidavit shows distinctly that the cause of action, namely, the illegal holding of the plaintiffs' property and the refusal to give it up, arose in Montreal. *Bottomley and Lumley* is not in point; for in that case the debt was for goods purchased in England. But in this case the affidavit alleges that the defendants, professional thieves, got possession of the bonds on a certain day, that they have got them in their possession here at Montreal, that the deponent, Mr. Routh, representing the plaintiffs who are described as doing business at Montreal, has personally demanded possession of the bonds, but that the defendants have failed to restore them, and have