shall show by positive authority, that he is in error, and that the distinction, if any, between civil and criminal cases, is to favor the admission of presumptive evidence, as supplying the want of direct proof in civil cases, whereas in criminal cases such evidence, although admitted, is always received with greater caution.

[Mr. Carter cited Best "Principles of Legal Evidence" p. 539; also, the cases of *Armory* vs. *Delanoirie*, 1 Strange, 505, and *Mortimer* vs. *Cradock*, 7 Jur 45.]

Then as to the fact, the evidence consists of not only strong presumptive proof, but positive, as derived from the admissions of the defendants, sworn to by two witnesses. It was proved that both defendants entered the Company's office at New York under pretence of effecting an insurance, and that one of them engaged the attention of the manager in such a manner as to divert his attention from the other. Within fifteen minutes after they had left, the box containing the bonds was missed from the safe. No other person entered the office between the time they left and when the loss was discovered. The defendants left New York the same day, and within a few days after, they are found in Montreal with their wives, changing large sums of money; whereas it is proved that, when in New York, they were in needy circumstances. In support of the position Mr. Carter assumed, he cited the following authority to establish that, the loss having been proved, the sudden flight and the change of circumstances of the defendants, coupled with their presence at the Company's office very shortly before the bonds were missed, constituted complete evidence of their guilt: Best "Pr. Legal Ev.," pp. 564, 568 and 569. Then there was additional evidence afforded by the defendants' avowal of the commission of the crime, and the description given of the way it was accomplished, agreeing precisely with the testimony of the manager as to what took place, to his knowledge, when the defendants were in the Company's office.

The next point to be considered is that urged by Mr. Kerr, who pretends that the affidavit of Mr. Routh has been destroyed by his subsequent examination as a witness. The very reverse is the case. Mr. Routh's examination fully corroborates what is contained in the affidavit he made. The authority cited from Archbold by Mr. Kerr does not apply. It is not pretended that the affidavit is defective, but it is said that Mr. Routh has admitted that his knowledge of the Company possessing the bonds was derived from the New York manager, and was, therefore, hearsay. In point of fact, Mr. Routh, while admitting this, has also said that he was confirmed in his belief of what the manager told him, by what the prisoners said to him, Mr. Routh, when he demanded the bonds from them. Assuming even that Mr. Routh had not seen the defendants before their arrest, if the affidavit was otherwise perfect, the question is not what means of knowledge had the deponent, upon whose affidavit the capias issued, but whether the material allegations were true. Take, for instance, the case of a merchant who makes the affidavit of a debt being due to him; if he was examined as Mr. Routh was, he would have to admit that he had no personal knowledge of the sale and delivery which was made by his clerks. But would Mr. Kerr pretend that in that case the capias would fail? Certainly not; the statute requires that the defendant should establish that there was no existing debt, as the sole question is one of fact, does the defendant owe or not?

MONK, J. You need not dwell any longer on that point.

The only question which remains for me to discuss, and in fact the only point worthy of consideration, is whether the cause of action arose in a foreign country. The whole of Mr. Kerr's argument is chiefly directed to this point, and his pretension is, that in cases of *délits* under our civil law, the right to a civil remedy accrues the moment the injury has been committed, and consequently that the cause of action arises where it has originated. In support of this pretension he has cited several authorities, many of them having no application, and others establishing a principle which favours the right contended for by the plaintiffs, that their remedy by civil action exists. It was contended by Mr. Robertson that the civil remedy could not be exercised. Upon this important point, the defendants'