so kind as to publish the learned Chief Justice's judgment in this case, which is as follows:

"RITCHIE, C. J.—(After reading the reserved case) In acting under this statute the Attorney or Solicitor General or Judge, as the case may be, exercises what is in the nature of a judicial function, he is to judicially decide whether the indictment is proper to be presented to or found by the Grand Jury, so that, while on the one hand the rights of the public are to be guarded, individuals are to be protected from (as Cockburn C. J., in *Queen* v. *Bray* [3 B. & S. 258] says) "the abuse of the right of prosecution, by proceedings instituted either vexatiously or from corrupt or sinister motives;" and the duty of exercising this judicial discretion, when the prosecutor or other person presenting an indictment has not been bound by recognizance to prosecute or give evidence, or when the person accused has not been committed to or detained in custody, or has not been bound by recognizance to appear to answer an indictment to be preferred against him, is vested in the Attorney General or Solicitor General or Judge to be by them personally exercised; "the circumstances (as Cockburn, C.J., in the same case says) under which the direction shall be given, having been left entirely within the discretion of one or other of these officers; and with the exercise of which the Court will not interfere." *The Queen* v. *Heane*, [4 B. & S. 947] shows that where an indictment has been preferred without either of the three conditions mentioned having been performed, the matter may be brought before the Court on affidavit after plea pleaded, and the indictment may in the discretion of the court be quashed, or the party on a doubtful case be left to his writ of error.

"I think therefore that there being a special statutory power, it must be strictly pursued; the propriety of sending a bill before the Grand Jury having been confided to the judgment and discretion of the Attorney General, *he cannot extend the provisions of the Act and delegate to the judgment and discretion of another the power which the Legislature has authorized him personally to exercise, no power of substitution having been conferred.* In the present case it is admitted that the Attorney General gave no directions with reference to this indictment; that the gentlemen who put the indorsement on the indictment did do so merely because they were representing the crown at the criminal term of the Queen's Bench in Montreal under a general authority to conduct the crown business at such term, but without any special authority over or any directions from the Attorney General in reference to this particular indictment. Under these circumstances the indictment in this case having been presented to and found by the Grand Jury without any compliance with the provisions of the statute, must be quashed."

2nd. In the case of *Shaw* v. *Mackenzie* "R." states: "There was no question as to the suffi-"ciency or insufficiency of the affidavit. In the "second place, no one pretended, that refusal "to pay an over-due debt, accompanied by de-"parture, was sufficient and probable cause "that the debtor is leaving *with intent to defraud* "*his creditors.*"

In appellant's factum before the Supreme Court and on the argument it was contended:

"This affidavit is plainly insufficient to "justify the issuing of a *capias*. By Art. 798 C. "P. C. quoted above, Mackenzie should have "*specially stated in his affidavit* his reasons for "believing that Shaw's leaving Canada was "with intent to defraud his creditors in general "and the plaintiff in particular," and he should "also have specially stated his reasons for believ-"ing that "such departure would deprive the "plaintiff of his recourse against the defend-ant."

Then I find that the defendants by their plea contend:

"That the said Kenneth Mackenzie having given, in the said affidavit, the reasons which led him to swear that the said plaintiff was to leave immediately this Province with the intent to defraud his creditors, has complied with the requirements of the law, and unless it is proved in the cause in which said *capias* has been issued, that it is false that said Mackenzie has been so informed, such affidavit is sufficient to grant to said defendants a writ of *capias*."

On this Mr. Justice Cross, one of the dissenting Judges of the Court of Queen's Bench, says:

"The Art. 798 of the C. C. P. requires, among other things, that deponent should state in the affidavit that he has reason to believe, and verily believes, for reasons specially stated in the affidavit, that the defendant is about to leave immediately the Province of Canada with intent to defraud his creditors in general or the