oral explanation or some supplemental information given by the applicant, who himself drew the affidavit and appeared in person before the Judge. This kind of evidence was not given or tendered on the former trial, and I took it with much hesitation and scruple. The Judge himself was not called, and it is not desirable that he should be called, nor could his testimony on this point be, in my opinion, properly admissible. In the face of what the defendant swore on the former trial, "that he told the Judge only what was in the affidavit," I do not think I can take into account the alleged oral and unsworn additions. But, even if admitted, they would not overcome the many serious difficulties that arise in being able to regard the affidavit as other than unfair and misleading.

The real test is, on the evidence, what was the knowledge possessed by or the information communicated to the creditor at the time he made the affidavit? That is to be investigated having regard to what is set forth in the four corners of the affidavit for arrest: he is to be taken as having relied only on what he chooses to set forth therein, and the scope of what he knew at that time is the matter to be considered in judging of the reasonable and probable cause for his action: Shaw v. McKenzie, 6 S. C. R. 181.

. . . .

[The Chancellor then dealt with the facts of the case.]

A view of all the facts and circumstances leads me to the conclusion that they are quite inconsistent with reasonable and probable cause for making an affidavit that the man was forthwith about to leave the province with intent to defraud the plaintiff. The affidavit as it stands produces a false effect by suppression, and was intended to be used for the intimidation of the plaintiff so as to coerce him into making a settlement. These elements afford sufficient evidence of "malice," as legally used, to justify the action. Fitchet was in gaol seventeen days before his discharge on affidavits.

At the last trial the jury gave $1,500 damages: this is too much, but I think justice will be served by a verdict for $500 and a discharge of the judgment recovered on the three notes, with the costs of that action in favour of the plaintiff.

The plaintiff should get his costs of this litigation.

Cox v. English Scottish and Australian Bank, [1905] A. C. 168, 171, and Hêtu v. Dixville Butter and Cheese Association, 40 S. C. R. 128, may be usefully referred to.