1914. *March* 9, 27. CURLEWIS, WARD and GREGOROWSKI, JJ.

Immigration.—Warrant of removal of undesirable.—Essential allegations in.—Omission of.—Cannot be cured by affidavit of Minister.—Act 22 *of* 1913, *sec.* 22.*

A warrant issued under section 22 of Act 22 of 1913 for the removal of a person from the Union should, in order to be valid, set out (1) the fact that such person has been sentenced to imprisonment for an offence specified in the section, and (2) the fact that such person has been deemed by the Minister to be an undesirable inhabitant of the Union by reason of the circumstances connected with the offence.

A warrant for the removal of F stated (*inter alia*) that he "had been deemed by the Minister to be an undesirable inhabitant of the Union, inasmuch as he had been sentenced to imprisonment for an offence referred to in par. (*c*)" of section 22. *Held*, that the warrant was not in accordance with the law, and was invalid. *Held* further, that an affidavit by the Minister to the effect that he did consider the circumstances connected with the offence, and that by reason thereof he deemed F an undesirable inhabitant of the Union, did not cure the defect in the warrant.

Held (*per* CURLEWIS and GREGOROWSKI, JJ.), that it was not necessary for the Minister to set out in the warrant the circumstances connected with the offence on which he deemed such person to be an undesirable.

Appeal against a decision of MASON, J., delivered on February 19, 1914. All facts appear from the judgment.

MASON, J.: The applicant was taken into custody under a warrant issued under section 22 of the Immigration Act 22 of 1913. That section was put into force against him by reason of his having been convicted, in 1909, of an offence against the Gold Law, and sentenced to imprisonment for eighteen months with hard labour. The warrant, according to the copy which has been put in, is signed by Mr. Gorges, the Secretary for the Interior, and dated 22nd November, 1913. The first objection which is taken to the warrant is that there is no proof that Mr. Gorges is authorised to sign it. Authority to sign these warrants is conferred by section 23 of the Act, upon any officer authorised by the Minister, by notice in the *Gazette*, to sign such warrants. The affidavit states that Mr. Gorges was duly authorised to sign the warrant, and I think if this had been an ordinary trial, the case of *Lalloo* v. *Rex* (1908, T.S. 624) and a great many other cases show that that would have been sufficient evidence of his authority, unless some objection were taken. But I think it would be competent for the person who appeared on behalf of the applicant to demand production of the *Gazette* appointing the particular officer. As soon as such demand is made, the authorities have an opportunity of complying with it. Therefore I think they

*Sec. 22 of Act 22 of 1913 reads: "Any person (not being a person born in any part of South Africa which has been included in the Union) who, . . . has been sentenced to imprisonment for (then follows a list of the offences) and who, by reason of the circumstances connected with the offence, is deemed by the Minister to be an undesirable inhabitant of the Union, may be removed from the Union by warrant. . . ."

should have the same opportunity of complying with it now as they would have had if this had been an ordinary trial. If no objection is taken, the evidence is sufficient. If objection is taken, the authorities should have an opportunity of producing the *Gazette*. That is why I gave leave to produce the *Gazette*, and that does prove sufficiently the authority of Mr. Gorges to sign the warrant.

The next objection taken is that the affidavit of the Minister, and the form of the warrant, show that the Minister did not apply his mind to those circumstances which, under section 22, would justify him in making an order of deportation. The section authorises the deportation of any person who has been convicted of certain crimes, whether before or after the commencement of the Act, and who, by reason of circumstances connected with the offence, is deemed by the Minister to be an undesirable inhabitant of the Union. There is no doubt that this is a most drastic, in fact, a despotic power. Any person who has at any time been convicted of these various crimes (which include the sale of liquor to coloured persons, and dealing in unwrought precious metals, both of which, I think, have been an offence for more than twenty years in this country) may be deported by the Minister, practically without appeal, if the Minister chooses to think, because of the circumstances connected with the crime, that they are undesirable inhabitants of the Union—it being understood, of course, that they are persons who were not born in South Africa. With reference to the contention that the Minister has not applied his mind to the circumstances connected with the offence, that is based, first, on the form of the Minister's affidavit, and second, on the form of the warrant. The Minister states definitely, with reference to the day when the warrant was signed, that both then and before he personally considered the circumstances connected with the offence, and upon that consideration came to the conclusion that the applicant was an undesirable inhabitant of the Union. I am not prepared, and I do not think I should be justified in going further into the matter of the exercise of the discretion of the Minister. He has sworn positively that he did consider those circumstances, and I am not entitled to revise or in any way challenge his decision. But there is one more ground on which objection is taken, and that is, that the warrant which was issued in this particular case does not conform with the warrant which should be issued in terms of the regulations. This is, as I have said, a most drastic Act. I think, therefore, it is incumbent on the courts to see that when it is exercised the forms provided for its exercise should be followed, in substance. The sixth annexure to the regulations gives the form of warrant to be used in deportations under secs. 6, 21 and 22. In that form there is the following reference; after the name of the person, and the section which is being put into operation, it is said: "Here recite the nature of the circumstances which have rendered the said person liable to removal." To learn the meaning of the words "nature of the circumstances," I think we ought to refer to the various circumstances under which such warrants may be issued. Section 6 provides that certain persons can be deported. Their deportation depends entirely on matters of fact. Therefore there is nothing else to do in those cases except to state the nature of the offence, or to state the facts which bring the person within that section. Section 21 is exactly of the same nature; where certain facts exist, a man may be deported. But section 22 is altogether different. It provides, first, that there must be certain facts, namely, conviction for certain classes of offences. Then it provides that if by reason of circumstances connected with the offence the Minister deems the person to be an undesirable immigrant, he may be deported. Therefore I think that, to give proper effect to this regulation,

where it says the nature of the circumstances which have rendered the person liable to deportation must be recited in the warrant, the circumstances which the Minister considers render that person liable to deportation must be set out in the warrant. One can quite see that this is a right and proper thing. The discretion of the Minister, in determining whether the circumstances are sufficient to render a person liable to deportation, is not a matter which can be reviewed by this Court. But I think it is right that a person should be told why an offence, which he has committed, perhaps twenty years ago, is of such a nature that he should now be deported from the country. He has perhaps had no conviction since that date; he may have lived a perfectly reputable life, and since he has served his sentence he may have been quite a good citizen. But the Minister may have considered certain circumstances in connection with the conviction which in his opinion render him liable to deportation. If that is stated in the warrant, it gives the man some opportunity of making an appeal to the Minister. It also enables the public to know on what grounds this very drastic power is being exercised. One can therefore see very good reasons for some such regulation being inserted and some such restrictions being imposed on the exercise of this very terrible power of deportation. I come, therefore, to the conclusion that in this particular case the warrant is invalid, because it does not set forth the nature of the circumstances which were considered by the Minister such as to render the applicant an undesirable inhabitant of the Union. I shall therefore declare the warrant invalid, and direct that the applicant be discharged from detention under this warrant. I can make, of course, no provision with regard to the future; all I declare is that this particular warrant is invalid, and so far as it is concerned the applicant is free.

Counsel for the applicant asked for costs; the *Attorney-General* did not oppose.

MASON, J.: I will declare the applicant entitled to costs.

From this judgment the Minister of the Interior appealed.

F. W. Beyers, K.C., Attorney-General (with him *B. de Korte*), for the appellant: Sec. 26 (1) (*i*) of Act 22 of 1913, provides that the Governor-General may make regulations, and in pursuance of the section regulations were issued under Govt. Notice No. 1079/1913; the form of the deportation warrant is set out in Annexure VI. of the regulations. The question is whether it is necessary to set forth in the warrant the circumstances which were deemed by the Minister to render it desirable that respondent should be deported. See *Minister of the Interior* v. *Costa* (1914, C.P.D. p. 7) and *Minister of the Interior* v. *Sluck* (T.P.D. 21, Jan., 1914, not reported). In the latter case the warrant was the same as in the present case. It was not necessary to set out the reasons in the warrant. The form as also the footnote in Annexure VI. applies also to secs. 6 and 21 of the Act and not only to sec. 22. There is no distinction between "by reason of the circumstances", etc., and "by reason

of the offence" in the section. The words "by reason of" confine the Minister to the offence. It must be presumed that the Minister has done his duty and considered the circumstances of the offence. See Broom's *Legal Maxims* (6th ed., pp. 625, 709) and *Alcroft* v. *Lord Bishop of London* (L.R. 1891, A.C. 666). There is nothing in the Act to indicate that the Minister should state his reasons. The words "circumstances connected with" in the section are surplusage because in any case they would have been implied. The warrant must set forth that the respondent committed an offence and that because of the offence he is deemed undesirable.

J. Stratford, K.C. (with him *L. Blackwell*), for the respondent: The form of the warrant is wrong. The warrant must contain two facts: (1) that the person has been sentenced for any of the offences in the section, and (2) that the Minister has deemed such person to be an undesirable. One cannot presume that the Minister acted in accordance with the provisions of the Act where the warrant practically states the contrary. I submit the document mentioned in sec. 26 is the warrant. I further submit that the Minister did not apply his mind to the circumstances of the case.

Beyers, K.C., A.-G., replied.

Cur. adv. vult.

Postea (March 27).

CURLEWIS, J.: This is an appeal against a decision of MASON, J., sitting in chambers, setting aside a warrant issued under sec. 22 of Immigration Regulation Act, No. 22 of 1913, for the deportation of the respondent. The learned judge held that the warrant was invalid, inasmuch as it did not comply with the form of warrant provided in the regulations published under that Act, in that the warrant did not set out the nature of the circumstances which were considered by the Minister such as to render the respondent an undesirable inhabitant of the Union. The respondent who was born in Ireland, was convicted in the Witwatersrand High Court on the 2nd of November, 1909, of having contravened sec. 106 of Act 35 of 1908 (the Gold Law) and sentenced to 18 months' hard labour. On the 22nd of November, 1913, a warrant was issued, signed by Mr. Gorges, Secretary for the Interior, for the removal of respondent from the Union; the reason for his removal is set out in the warrant as follows: "Whereas William Farmer has

rendered himself liable to removal from the Union by reason that in terms of sec. twenty-two of the Immigration Regulation Act, 1913, the said William Farmer has been deemed by the Minister to be an undesirable inhabitant of the Union, inasmuch as he has been sentenced to imprisonment for an offence referred to in paragraph (*c*) of the said section." The Regulations (sec. 24) provide that a warrant which may be issued under sec. 6, 21, or 22 of the Act shall be in the form set out in the sixth annexure to the regulations. That annexure gives the form of warrant and indicates in the space left blank, for the reason of the person's removal, " Here recite the nature of the circumstances which have rendered the said person liable to removal." Now as regards a removal under either sec. 6, or sec. 21, of the Act, there can be little difficulty in deciding what circumstances rendered the person liable for removal. But what circumstances render a person liable to removal under sec. 22? The learned judge in the court below held in effect, that the circumstances which have to be recited are those circumstances connected with the offence on which the Minister came to the conclusion that the person is an undesirable inhabitant of the Union.

I regret that I cannot share this view. The circumstances which render a person not born within the Union, liable to removal under sec. 22 appear to me to be: (1) the fact that such person has been sentenced to imprisonment for any offence set out in (*a*), (*b*), or (*c*), and (2) the fact that such person is deemed by the Minister to be an undesirable inhabitant of the Union, by reason of the circumstances connected with the offence. These two facts constitute the circumstances which render a person liable to removal under sec. 22. Neither by the law, nor by the regulations, is it required that the Minister, or the person signing the warrant, should set out the various facts, or circumstances connected with the offence, which operated on the mind of the Minister in influencing him to come to the decision that a person is an undesirable inhabitant of the Union; in other words the Minister is not required to give his reasons, and his decision is not subject to review, or appeal. In the present case, therefore, the circumstances which rendered respondent liable to removal and whose nature had to be recited in the warrant were (1) that the respondent had been sentenced to imprisonment for being in possession of unwrought gold in contravention of sec. 106 of the Precious and Base Metals Act 1908 (Act

No. 35), and (2) that he has been deemed by the Minister to be an undesirable inhabitant of the Union by reason of the circumstances connected with that offence. Had the warrant alleged these two facts, or circumstances, it would in my opinion have been in order and valid. But the warrant merely states that "Farmer has been deemed by the Minister to be an undesirable inhabitant of the Union, inasmuch as he has been sentenced to imprisonment for an offence referred to in paragraph (*c*) of the said section." But the fact that he has been so sentenced is in itself not sufficient to make him liable to removal; a further fact is necessary, viz., that the Minister has deemed him an undesirable inhabitant by reason of the circumstances of that offence. This should be set out in the warrant, so that *ex facie* the warrant it will appear whether the Minister has directed his mind to the circumstances connected with the offence. The *Attorney-General* has urged that it must be presumed that the Minister has done his duty and considered the circumstances of the offence, and that the use of the word "deemed" in the warrant shows that this has been done by him. But the warrant clearly states why he was "deemed" undesirable, namely, not by reason of the circumstances connected with the offence, but "inasmuch as he has been sentenced to imprisonment for an offence referred to in paragraph (*c*) of the section." Moreover, I do not think we are called upon to make any such presumption in the present case. The warrant is not signed by the Minister, but by the Secretary for the Interior; under sec. 26 of the regulations it is provided that when the Minister has expressed his opinion on the matter, that opinion shall be embodied in a document issued by him. It may possibly be presumed that the officer, authorised to issue the warrant will not do so until the Minister has embodied his opinion in a document, but the officer is directed by the regulations to set out in the warrant, certain information, and in a matter of this sort, however technical it may appear, I do not think that we should recognise the warrant, unless it clearly sets out the information prescribed. It is a formality required by the regulations, and in a procedure of so drastic a nature as that before us, in which the person affected has no right of appeal or review, the Court should require that the formalities prescribed be strictly followed. The fact that the Minister has in his affidavit in this application stated that he did consider the circumstances connected with respondent's offence and that by reason thereof, he deemed

him an undesirable inhabitant of the Union, ought not now to weigh with us in deciding whether the warrant complies with the regulations or not. That should appear on the face of the warrant itself. I am therefore of opinion that the warrant is invalid, for the reasons stated, and the appeal must be dismissed with costs. I might remark, though this was not a point taken on behalf of respondent, that it does not appear to me to be sufficient for the warrant to make a general reference to an "offence referred to in paragraph (*c*) of the said section." Paragraph (*c*) refers to offences under two distinct laws, the Diamond Trade Act, as well as the Precious and Base Metals Act, and the warrant should specifically set out the actual offence for which the person was sentenced to imprisonment; it being in this case, as stated above, for being in possession of unwrought gold in contravention of sec. 106 of the Precious and Base Metals Act, 1908.

WARD, J.: I agree that this appeal must be dismissed. In arriving at that decision it is not necessary for me to decide the question whether it is necessary for the warrant to recite the circumstances connected with the offence which the Minister considered in arriving at a decision in the matter. There is considerable force in the observations of the learned judge whose decision is appealed against. There is no doubt that the mere stating of the circumstances considered would be some safe guard though perhaps a slender one that the discretion of the Minister has not been lightly used or upon very slight consideration.

The *Attorney-General* first contended that the words "by reason of the circumstances connected with the offence" meant merely by reason of the fact of the offence and that therefore the words could be disregarded. He referred us to the case of *Reg.* v. *Bishop of London*. In that case it was sought to issue a *mandamus* against the Bishop of London ordering him to take certain specified steps to have a complaint against an addition to the ornaments of St. Paul's Cathedral as being "unlawful" tried. The Bishop shall take such step "unless he shall be of opinion, after considering the whole circumstances of the case, that proceedings should not be taken in which case he shall state his opinion in writing."

Every one of the six judges who gave decisions in that case attached the greatest importance to the words "the whole circumstances of the case." It was held that provided the Bishop did

consider the circumstances of the case and did give reasons in writing the Court could not interfere with his discretion. In so far as that case can in any way he said to be applicable to the present it tends to show that the Court would order the release of a prisoner if it is shown that the Minister is not following the procedure laid down by the Act. But it is no authority for holding that the ordinary meaning is not to be given to the words "circumstances connected with the offence." Now it is clear that the warrant does not state that the Minister has considered the circumstances connected with the offence. On the contrary it states that the Minister has deemed the respondent an undesirable inhabitant of the Union inasmuch as he has been sentenced to imprisonment for an offence referred to in par. (*c*) of sec. 22 of the Immigrants Regulation Act. That follows the line of the *Attorney-General's* argument that the mere fact of the sentence is sufficient. But to my mind it is clear that there must be both a sentence and circumstances connected with the offence by reason of which the Minister deems him undesirable to justify the issuing of a warrant. And unless both these facts are stated then the nature of the circumstances which have rendered the said person liable to removal have not been recited in the warrant. Consequently the warrant is not in the form required by the regulations. It was suggested that we are to presume that the Minister has complied with the Act: *omnia presumuntur rite esse acta.* The same argument could be used if the warrant had not stated what offence the respondent had been sentenced for. Why I should presume the Minister has considered circumstances connected with the offence when the *Attorney-General* has argued that it is not necessary for him to do so and the warrant itself states that he deemed the man an undesirable inasmuch as he had been sentenced I find it difficult to see.

I do not think the subsequent affidavit of the Minister can cure the warrant.

In my opinion the regulations under the Act have not been complied with and the warrant is bad.

GREGOROWSKI, J.: The applicant is an Irishman about 60 years of age, who came to the Transvaal in 1882, and since then has resided in the Transvaal. During the year 1909 he was convicted under the Gold Law of contravening sec. 106 of Act 35 of 1908 and sentenced to 18 months' imprisonment with hard labour. On the

9th December, 1913, he was arrested under a warrant issued under sec. 22 of Act 22 of 1913, and was to have been deported on the 20th December, 1913. The applicant's complaint is that the warrant "has been arbitrarily, unlawfully, wrongfully, without just cause and in defiance of the provisions of the section, issued and executed against his person," and he asks to be discharged.

The provisions of sec. 22 are quite clear that a person who has been sentenced to imprisonment for *inter alia* "dealing in unwrought precious metal" before or after the passing of the Act can be deported "if by reason of the circumstances connected with the offence he is deemed by the Minister to be an undesirable inhabitant of the Union." Under sec. 26 of the Act the Governor-General of the Union is authorised to make regulations prescribing the forms of warrants which are to be used, and these regulations have been promulgated and the sixth annexure to the regulations gives the form of the warrant to be used for the removal of persons under secs. 6, 21 and 22 of the Act. A blank space is left in the form of the warrant wherein has to be inserted "the nature of the circumstances which have rendered the said person liable to removal." The nature of the circumstances would naturally vary according to the section under which the person was removed.

The objection with which the Court has to deal relates to the filling in of the blank space above referred to in a case of deportation under sec. 22 and to the nature and scope of the insertion which has to be made.

In the warrant in this case the space is filled in as follows, "the said William Farmer has been deemed by the Minister to be an undesirable inhabitant of the Union inasmuch as he has been sentenced to imprisonment for an offence referred to in paragraph (*c*) of the said section," and much criticism has been directed to these words. It is said that the words imply that the mere sentence of imprisonment of the applicant under the section of the Gold Law renders him liable to removal and justifies the Minister ordering his removal, whereas under sec. 22 of the Act what renders him liable to removal is the sentence of imprisonment and coupled therewith the fact that by reason of the circumstances connected with the offence the applicant is deemed by the Minister an undesirable inhabitant of the Union.

The learned judge *a quo* was of the opinion that the warrant was bad and should be set aside because the nature of the circumstances

which has to be set out therein means the circumstances which had led the Minister to the conclusion that the applicant is an undesirable inhabitant, and must be removed. I do not adopt this view. The form of the warrant as given in the regulations is the same whether the person is removed under sec. 6 or under sec. 21 or under sec. 22, and therefore it is impossible to hold that the interpretation of the words " nature of the circumstances " in the regulations is to be found by referring to sec. 22 of the Act. There seems to be no reason for holding that the words " by reason of the circumstances connected with the offence " have anything to do with the use of the words " nature of the circumstances " in the regulations.

It is common cause that the Minister's opinion or decision under the Act is not subject to review, and if this is so there would be no object in the Minister stating his reasons in detail. The Act nowhere requires the Minister specifically to state his reasons. Regulation 26 requires him to express his opinion in writing, but nowhere in the Act or in the regulations is there reference to his reasons. I think if the legislature had wished the Minister to give his reasons the Act would have directed the reasons to be given and recorded but as the intention was that his opinion should be final and conclusive, there was no purpose to be served by requiring his reasons to be stated. There is no cause for thinking that the regulations meant to go beyond the requirements of the Act.

Sec. 22 requires the Minister to limit himself to the circumstances of the offence, in deciding whether the person sentenced to imprisonment for the offence is an undesirable inhabitant of the Union. The Minister would not be justified in considering the conduct of the person before or after his conviction and apart from the offence, but his decision not being subject to review, it must be assumed that he has acted in accordance with the directions of the Act. Sec. 23 (2) provides that any warrant when issued shall be evidence in all courts that it was issued in accordance with the provisions of the Act. It cannot be assumed that the provisions of the Act have not been regarded.

The nature of the circumstances which render the applicant liable to removal are not very happily stated in the warrant. It would have been better if this part of the warrant had read " the said William Farmer has been sentenced to imprisonment for an offence referred to in paragraph (*c*) of the said section namely (stating the

section and the Act) and the Minister deems him to be an undesirable inhabitant of the Union by reason of the circumstances of the said offence." This would embrace all that is required to be stated and there would be this advantage that the words would exactly follow the words of the section of the Act. The applicant admits in his affidavit that he was sentenced for an offence referred to in paragraph (*c*) of sec. 22 so that no point is made of the vagueness of the warrant in this respect.

It is said that the removal of the applicant is such a drastic act that the words of the warrant should be very closely scrutinised *in favorem libertatis*, and I agree if anything essential were omitted which was necessary to bring the applicant within the section. As the law stands this matter of removal is entirely in the hands of the Minister as an administrative act, and the closest scrutiny of the warrant can bring poor consolation to the person liable to removal as any technical defect of statement therein can be at once remedied, but although this is so the applicant is entitled to demand that the technical requirements of the law are observed.

I have had the advantage of perusing the judgments which have been delivered and I come to the same conclusion namely that the wording of the warrant does not sufficiently comply with the Act and with the regulations.

The regulations require to be stated "the nature of the circumstances which render the applicant liable to removal," and these circumstances in a case falling under sec. 22 are substantially three, (*a*) the sentence to imprisonment for one of the offences specified in the section, (*b*) that there were special features connected with this offence, (*c*) that by reason of these special features the Minister deems the applicant an undesirable inhabitant of the Union.

I do not think it is necessary that the special features of the offence, "the circumstances connected with the offence," should be set out in detail, but I think that the warrant should state that the Minister has based his opinion as to the desirability of the removal of the applicant on "the circumstances connected with the offence." This forms a very important protection to the subject, and a very material limitation to the power of the Minister.

There is an affidavit before the Court made by the Minister in which he states that he has considered the circumstances connected with the offence, and having formed his opinion thereon he directed

the removal, but this affidavit cannot supply the defect in the warrant as it was made after the applicant was arrested and after he had filed his petition complaining of the invalidity of the warrant.

There are two cases which clearly indicate that in warrants of this kind in which the liberty of the subject is assailed, the applicant is entitled to rely on technical defects in the warrants at the time of execution, and that these defects are not cured by what takes place afterwards, or by evidence outside the warrant. There is the case of *Rigg* v. *Roper & Jackson* (4 S.C. 114), where a search warrant was issued against the plaintiff and it was sent by telegram and before the warrant itself arrived, the plaintiff's premises were searched. There was provision by law for telegraphing a warrant of arrest, but no provision for the telegraphing of a search warrant and the court held that although the search warrant had been posted and was on the way, yet the searching of the plaintiff's premises was illegal.

The other case was the case of *Winer* v. *Garcia and Hingle* (25 S.C. 576 and 3 Buch., A.C. 326). This was also the case of a search warrant under the Diamond Act. The warrant had been issued, and was telegraphed under the amending Act of 1888 which provided for the telegraphing of such a search warrant, but the warrant did not exactly describe the Act under which it was issued, and it was held to be bad. The CHIEF JUSTICE said, "I consider that the warrant ought not to have referred to the Diamond Trade Act No. 14 of 1885, because the warrant was granted under the Act of 1888, and the telegram was also sent under that Act (of 1888). Then again as to the capacity in which he purported to sign (referring to the defendant Garcia) it would have been more regular for him to have stated that he signed in the capacity of chief of police which is the capacity referred to in the Act of 1888." Garcia had signed as "chief of the Detective Department and J.P. for the Colony" though he was also chief of police. On these technical grounds the warrant was held to be illegal and the CHIEF JUSTICE remarked, "I think the law should be as strictly as possible complied with." BUCHANAN, J., said, "Any irregularity is of considerable moment where the liberty of the subject is involved and I wish particularly to emphasise the CHIEF JUSTICE'S remarks about the necessity of persons entrusted with great powers, to interfere with the liberty of the subject or to take action involving an in-

dignity to the subject to act with caution and with great regard to all necessary technicalities."

In view of these authoritative *dicta* I feel that the warrant in this matter was defective and irregular and the applicant is entitled to have it set aside.

Appellant's Attorneys: *Pienaar & Marais*; Respondent's Attorneys: *Wagner & Klagsbrun.*

[G. v. P.]

CAZALET v. JOHNSON.

1914. *March* 25, 30. CURLEWIS and GREGOROWSKI, JJ.

Liquid document.—"Guarantee to refund."—Meaning.—Proc. 21 *of* 1902, *sec.* 12 (*b*) (1).

A document to the following effect: "In consideration of £400 you have to-day advanced to Mr. J. B. Dyer Young, I hereby guarantee to refund you the sum of £325" is a liquid document within the meaning of section 12 (*b*) (1) of Proclamation 21 of 1902.

Appeal from a decision of the civil magistrate, Johannesburg.

The appellant sued the respondent on the following document dated and duly stamped and written in the form of a letter as follows: "Dear Mr. Cazalet,—In consideration of £400 you have to-day advanced to Mr. J. B. Dyer Young, I hereby guarantee to refund you the sum of £325. (sg.) Geo. Lindsay Johnson."

The defendant excepted to the summons as being bad in law in that it did not contain an allegation of excussion of the principal debtor, or otherwise and that the claim exceeded the jurisdiction of the magistrate.

The magistrate held that the document was not a liquid one within the meaning of sec. 12 (*b*) (1) of Proc. 21 of 1902, that he had no jurisdiction to hear the case, and dismissed the summons with costs. The plaintiff appealed.

L. Blackwell, for the appellant: The whole question depends upon the construction of the document, and whether the magistrate has jurisdiction. See Proc. 21 of 1902, sec. 12 (*b*) (1); Buckle