Court in the Transvaal. With regard to the practice which has obtained with reference to attorneys, my brother MASON has referred me to sec. 11 of the Proclamation, which provides for the admission of attorneys, and which gives the Court a discretion; it says, "Every person admitted to practise as an attorney shall take the oaths set forth in schedule C. hereto annexed in open Court, *unless otherwise ordered.*" These latter words are not in sec. 10, with reference to the admission of advocates, and the applicant must therefore take the oaths here.

MASON, J.: I concur.

[Attorneys for Applicant, NESER & HOPLEY.]

[Reported by ADOLF DAVIS, Esq., Advocate.]

DE VILLIERS, J.P. (In Chambers.) October 4th, November 5th, 1912.

KHUSAL DASS *vs.* MINISTER OF JUSTICE AND ANOTHER.

Asiatics.—Registration.—Application for.—Refusal.—Notice.—Temporary address.—Non-receipt.—Deportation order.—Relief.—Act 36 *of* 1908, *sec.* 6.

Notice of the refusal to register an Asiatic was posted in terms of sec. 6 (1) *of Act* 36 *of* 1908 *to the address given on the application form. Such notice was not received by the applicant, and consequently no appeal was noted, and in due course an order of deportation was made. In an application for relief:*
—Held, *that, as the non-receipt of the notice was due to the applicant having given his temporary address, it was not a sufficient ground for relief.*

Sec. 6 (1) of Act 36 of 1908 reads: "whenever the Registrar is satisfied that any Asiatic claiming to be entitled to registration under section *three* is not so entitled, he shall refuse to issue to him a certificate of registration and notice of the refusal shall be sent by post to such Asiatic at the address given upon his form of application."

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Khusal Dass vs. Minister of Justice and Another.

Application for an order restraining the Minister of Justice from putting into operation a certain order of deportation against the applicant, and calling upon the Registrar of Asiatics and the Minister of Justice to show cause why the applicant should not be granted further reasonable time within which to comply with the requirements for notice of appeal under sec. 6 (2) of Act 36 of 1908.

Applicant applied for a certificate of registration on the 25th January, 1912. On the 29th March he was notified that he should present himself in person before the Registrar of Asiatics on the 16th April with his witnesses, which he did, and on April 24th a notice was sent in terms of the law refusing his application for registration. In the application form for a certificate, which form was filled in and signed by the applicant, he gave his residence as 180, Market Street, Johannesburg. The notice of refusal was sent to this address by registered letter. It appeared that the applicant was residing there only temporarily, and he stated that he removed from that address and never received the notice of refusal. On the 12th June, 1912, he was notified to present himself, in terms of the law, before the magistrate specially appointed to hear appeals under the Act. Applicant did not do so, and on June 18th an order of deportation was made against him. Applicant now made the present application to the Court.

R. Gregorowski, for the applicant: Applicant is entitled to relief. From various letters written to the Registrar he knew the applicant's postal address. The notice was sent in accordance with the law, but applicant, through no fault of his own, did not receive it, and is entitled to relief, and the Court can grant relief.

[DE VILLIERS, J.P.: Is there any authority for saying that the Court can grant relief?]

There is no decision on this point, but the Court has inherent powers; it is indispensable that applicant should have received the notice. If a person did not receive a notice through the fault of the post he would be entitled to relief.

C. W. de Villiers, for the respondents: The registrar did everything in terms of the Act. He received the application, decided upon it, refused it, and sent notice of the refusal to the applicant at the address given by him on the certificate, and that was the only address to which the notice could be sent. There is nothing to show that the address given by the applicant was not a false one; if it is not a false address, it is difficult to see why the applicant did not receive the notice. The Court cannot grant relief; there is no principle upon which the Court can grant relief.

[DE VILLIERS, J.P.: The Court grants relief if an appeal has lapsed.]

That is specially provided for by Statute. This is not a judicial proceeding. As to the discretion of an immigration officer, see *Nathalia* vs. *Principal Immigration Officer* (1912, A.D. 23). The registrar has followed the provisions of the Statute; an order has now been properly issued against the applicant, and that order is an administrative one. If that order were now set aside, the application would practically amount to an appeal, and there is no appeal.

[DE VILLIERS, J.P.: Why should applicant not be given an opportunity to be heard?]

No discretion is given to the Court in the Statute.

R. Gregorowski, in reply: No address has been given in the application form, but only the residence of the applicant, and residence is not necessarily a person's address; moreover these forms only requiring the residence to be stated are issued by the department.

[DE VILLIERS, J.P.: You are presumed to know the law.]

The applicant was not asked for an address, but only for his residence; the authorities should ask a person's address.

Cur. adv. vult.

Postea (November 5th).

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DE VILLIERS, J.P.: This was an application which came before me in Chambers, for an order restraining the Minister of Justice from putting into operation a certain order of deportation against the applicant, and calling upon the Registrar of Asiatics and the Minister of Justice to show cause why the applicant should not be granted further reasonable time within which to comply with the requirements of the notice of appeal under sec. 6 (2) of Act 36 of 1908.

It appeared that the petitioner applied for a certificate of registration on the 25th January, 1912. On the 29th March he was notified that he should present himself in person before the Registrar of Asiatics on the 16th April, which he did with his witnesses; and on the 24th April last a notice was sent in terms of the law refusing his application for registration. In the application form, which was filled in and signed by the applicant, he gave his residence as 180, Market Street, Johannesburg. The notice of refusal was sent to this address. It appears that the applicant was residing there only temporarily, and he says he removed from that address and never received the notice of refusal. On the 12th June following he was notified to present himself, in terms of the law, before the magistrate specially appointed to hear appeals under the Act. He did not do so, and on the 18th June an order of deportation was made against him. He now asks the Court to restrain the Minister of Justice from carrying this order into effect, and, in addition, to give him further reasonable time in which to lodge an appeal under sec. 6 (2). The point has been advanced by Mr. *Gregorowski*, on behalf of the applicant, that although sec. 6 (2) requires that the appeal should be lodged within fourteen days, in this particular case the notice of refusal never came to the knowledge of the applicant, and therefore he is entitled to relief, inasmuch as the law contemplates that the notice should have been received by the applicant, unless there is some default on his part. The second point taken by counsel is that the application form specifies the residence of the applicant, which is not necessarily his address; that the form is one supplied by the depart-

ment, and that the department therefore is to blame for the non-receipt of the notice by the applicant. In order to determine whether these contentions are correct, we must look at the law. Sec. 6 (1) prescribes that whenever the Registrar of Asiatics is satisfied that an Asiatic who claims to be entitled to registration is not so entitled, then he shall refuse to issue to him a certificate of registration; and it directs that notice of the refusal shall be sent by post to such Asiatic at the address given upon his form of application. It is contended by the registrar that the law has been complied with in all respects, and I agree with this. The administrators of the law have done everything which is required of them to be done. The Registrar of Asiatics duly considered the application; he adjudicated upon it and refused it, and sent the notice of refusal to the applicant at the latter's residential address, which was the only address indicated upon the application form. If within fourteen days from the date of the notice of refusal—not the date of the acceptance or receipt of the notice by the applicant—no appeal has been lodged, then the law takes its course; sub-sec. (4) of sec. 6 comes into operation, and the magistrate makes the order of deportation in due course. In the present case the law has been complied with. It certainly may work hardship in some cases, but I am not satisfied that it has done so in this particular case. An Asiatic who makes an application to the Registrar of Asiatics must see that he gives his proper address to which he wishes notices to be sent. He is presumed to know the law, and he should see that the address which he gives is his correct address. In the present case the applicant does not seem to have taken very much trouble. He says he gave his residence, which to my mind is the address which is indicated upon the form, and that he removed shortly thereafter from that residence, that the Registrar of Asiatics had his other addresses, and that other letters which had been sent to those addresses had all reached him. The reply to that is that if he had chosen to give any of those other addresses, which were evidently his proper addresses, the letter, according to law, was bound to be

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directed to the particular address which the applicant gave upon the application form, and in that case there would have been no difficulty. The application must therefore be refused with costs.

[Applicant's Attorneys, NESER & HOPLEY. Respondent's Attorneys, PIENAAR & MARAIS.]

[Reported by GEY VAN PITTIUS. Esq., Advocate.]

DE VILLIERS, J.P. (In Chambers). October 4th, November 5th, 1912.

PURBHOO PURSOOTH *vs.* MINISTER OF JUSTICE AND ANOTHER.

Asiatics.—Registration.—Application for.—Refusal.—Notice.—Non-receipt.—Error.—Carelessness of applicant.—Act 2 of 1907.

An Asiatic applicant for registration under Act 2 of 1907 *gave as his address a certain post office box number. Notice of refusal to register was posted to the box number, but owing to an error, which was partly due to the applicant's carelessness, the notice was returned to the sender. The applicant consequently failed to note an appeal against the refusal to register, and was subsequently ordered to be deported:*— Held, *that the applicant was not entitled to relief.*

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Purbhoo Pursooth *vs.* Minister of Justice and Another.

Application for an order cancelling a certain order of deportation made against the applicant by the A.R.M. of Pretoria, and directing the magistrate to hear the case on its merits.

Applicant applied for registration under Act 2 of 1907 on the 5th February, 1912. On his application form he gave his address as "P.O. Box 3249, Johannesburg." The application was considered by the Registrar of Asiatics, in terms of the law, and was refused, and notice of the refusal was sent to the applicant (who was admitted to be an adult Asiatic) to the above address by registered letter on April 18th, and a copy of the notice was also affixed to the principal door of the magistrate's office. Therafter, in due course, on the 16th July, an order of deportation was made against the ap-