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sub-registrar's procedure was that Bai Khatija was not "a person intending to register the document" (section 31), and that, therefore, the sub-registrar could not go to her residence though he might have gone to the residence of the person in whose favour the document was executed. But it appears to us that, seeing that Bai Khatija was a party executing the document, and that she was willing to join in registering the document, and that the sub-registrar was called to her residence—no doubt at her desire—in order to enable her to take her part in the registration without inconvenience, she may very properly be considered to have been a person intending to register the document. The judgment of the Judicial Committee in *Mohammed Ewaz v. Birj Lall* ⁽¹⁾ may with advantage be studied in connection with the question which we have been called upon to decide. We reverse the decrees of the Courts below, and remand the case for a trial on the merits. Costs to follow the final decision.

Decrees reversed.

(1) L.R. 4 Ind. Ap. 166.

APPELLATE CIVIL.

Before Mr. Justice Melvill and Mr. Justice Kemball.

December 12. **RAMCHANDRA SAKHARAM, APPELLANT, v. KESHAV DURGAJI**
 BY HIS AGENT HAKMA DEPAJI, RESPONDENT.*

*The Civil Procedure Code Act (X of 1877), Section 37, Clause (a)—Non-resident—
 Recognized agent.*

The term 'non-resident' in section 37, clause (a), of the Code of Civil Procedure Act (X of 1877) covers every absence which may reasonably be supposed to have been within the contemplation of the Legislature in using that term: thus, where a Marwadi had resided for forty years at Pen, and had also a place of business there, but who had gone to his native country to get his sisters married, and had been absent upwards of four months, it was

Held that he was 'non-resident' within the local limits of the jurisdiction of the Pen Court, and that a person holding a general power of attorney from him was a recognized agent within the meaning of the section.

This was a second appeal against the decision of C. E. G. Crawford, Assistant Judge of Thana, reversing the order of Rao Saheb A. K. Kothare, Subordinate Judge of Pen.

* Second Appeal, No. 185 of 1881.

One Keshav Durgaji obtained a decree against the appellant in the Civil Court of Pen. Shortly afterwards he went to Marwad, his native country, to get his sisters married, leaving his agent, Hakma Depaji, in charge of his business at Pen. Keshav resided with his family at Pen for nearly forty years, and was a municipal commissioner of the town. Hakma applied for the execution of the decree.

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The Subordinate Judge held that Keshav was a resident of Pen, and that in his temporary absence the person holding a general power of attorney from him could not be regarded as his recognized agent within the meaning of section 37, clause (a), of the Civil Procedure Code Act (X of 1877). The Assistant Judge, on the authority of *Fathima v. Sakina* ⁽¹⁾, came to a different conclusion.

The judgment-debtor appealed to the High Court.

Pandurang Balibhadra for the appellant.

Shantaram Narayan for the respondent.

The judgment of the Court was delivered by

MELVILL, J.—We think that, as was said in *Mahomed Shuffli v. Laddin Abdula* ⁽²⁾, the word “resident” in legislative enactments must be construed according to what may be supposed to have been the intention of the Legislature in using the term. The word need not necessarily have the same meaning in different enactments, nor even in different sections of the same enactment. For example, explanation 1 to section 17 of Act X of 1877 indicates that in that section the term may be used in a different or wider sense than that which it bears in other parts of the Code. Clause (a) of section 37 of the Code is a clause enabling persons who are not resident within the local limits of a Court to appear by a person holding a general power of attorney. It may be supposed that the Legislature intended to give the benefit of this provision to all persons, and especially to traders, whose interests might be seriously compromised, if, during their absence from home and their place of business, they could leave no one behind who could represent them in Court, as well as conduct their business. The intention of the Legislature may be supposed

(1) I. L. R. 1 All. 51.

(2) I. L. R 3 Bom. 227.

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to be favourable to the enforcement of legal rights; and just as in section 17 the term "reside" is to be construed broadly, so as to prevent a debtor from evading the claims of his creditors, so in section 37 it would seem right that the term "non-resident" should be construed broadly, so as not to prevent a creditor from enforcing his claims against his debtor. We certainly should not be disposed to adopt a highly technical view of a question which in no way affects the merits of the case between the parties. No doubt the term "non-resident" cannot be allowed to cover every absence from home, whatever its nature or duration; but it may be allowed to cover every absence which may reasonably be supposed to have been within the contemplation of the Legislature. In the present case the plaintiff is a Marwadi, who has been resident at Pen for forty years. He still has his place of business at Pen. But, previously to the presentation of his *darkhast* on the 1st December, 1879, he had gone to his native country, Marwad, to get his sisters married. When the Subordinate Judge delivered judgment on the 17th April, 1880, —*i. e.*, after four and a half months—he was still absent. Considering the distance of his native country and the purpose for which he had gone, his absence must necessarily have been intended to be a prolonged absence. It would be exceedingly hard upon him if, during such an absence, suits, which would otherwise be time-barred, and for which he could not have provided before his departure, could not be brought on his behalf by the manager of his business. We cannot doubt, (though it is impossible to lay down any precise rule to suit all cases), that this case was exactly such a case as was within the contemplation of the Legislature, when enacting the clause enabling non-resident persons to appear by general agent. We, accordingly, confirm the order of the Assistant Judge, with costs.