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been two instances in which the succession to shares in Dharoda has by the family been permitted to be *per stirpes*—the mode of descent for which he contends—we direct that the parties, respectively, do bear their own costs of this appeal. Those two instances, though insufficient to constitute an ancient and invariable custom, probably induced him to bring this suit. He must pay the costs in both of the Courts below.

Decree reversed.

APPELLATE CIVIL.

Before Mr. Justice Melvill and Mr. Justice Kemball.

November 21.

ISA'K MAHAMAD AND ANOTHER (PLAINTIFFS), APPELLANTS, v. BA'I KHATIJA' AND OTHERS (DEFENDANTS), RESPONDENTS.*

Registration—Presentation—Residence of executant—Intending to register—Special cause—Registration Act VIII of 1871, Sections 31 and 85.

The words “any person intending to register any document” in section 31 of the Registration Act VIII of 1871 include, not only the person or persons in whose favour a document is executed, but also any person or persons executing the same.

Under the provisions of that section, therefore, the presentation of a document for registration, on special cause shown, at the residence of a party executing it, is valid.

The registering officer is the judge of the sufficiency of the special cause; and, if he is satisfied, the Civil Court has no power to question his decision on that point.

Assuming the presentation at the residence of one of the executants of a document for registration to be an irregularity, it is one which, if committed in good faith, is covered by the provision of section 85 of Act VIII of 1871.

THIS was a second appeal from the decision of S. Hammick, Acting Assistant Judge of Surat, confirming the decree of Rao Saheb Chunilal Maneklal, Subordinate Judge of Broach.

On the 21st of August, 1874, the defendant, Khatija executed to the plaintiffs, Isak Mahamad and Ardesar Nasarvanji, a deed of sale of a certain field for Rs. 999. The deed was registered on the 5th of September following; but the defendants refusing to give up possession of the field, the plaintiffs brought the present suit.

* Second Appeal, No. 279 of 1880.

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The defendants (*inter alia*) contended that the plaintiff's title was bad, inasmuch as the sale deed had not been presented for registration at the registrar's office or at the residence of any person intending to register it. The Subordinate Judge as well as the Assistant Judge allowed the contention, and rejected the plaintiff's claim. The Assistant Judge said: "The document was presented for registration by Mahamad Jiva, father and guardian of the plaintiff, Isak, a minor, and all the legal formalities were apparently gone through. But the presentation and registration took place, not in the office of the sub-registrar, but in Khatija's lodging. This fact, in my opinion, invalidates the proceedings *ab initio*. The place of registration is of sufficient importance to occupy a special part (Part V) of the Registration Act (VIII of 1871); and section 28 lays down in general terms that, "save as otherwise provided, every document shall be presented for registration in the office of the sub-registrar". The question of place of registration (within the proper registration district) is settled in section 31, which says that "in ordinary cases the registration of documents under this Act shall be made only at the office of the officer;" "but such officer may, on special cause being shown, attend at the residence of any person intending to register any document which would ordinarily be registered at such office, and register or accept for registration such document. The terms of the law are clear. They declare that in ordinary cases registration shall be made at the office alone; but in the case now in question it was not made at the office. Second: it is provided that, on special cause being shown, the officer may attend elsewhere; but in this case it is not proved that any special cause was shown, or existed in fact. If Khatija's illness is the alleged special cause, I cannot accept it as a sufficient one, as she was able to take the journey from her village to Broach, and to drive about in a bullock cart. Third, under special circumstances the officer may attend at the residence of the person intending to register the document; but here Mahamad Jiva was the person intending to register the document, and the place at which the registration took place was Khatija's residence, and Mahamad is not stated to have been even temporarily residing there. These several failures to comply with the clear provisions of the Code compel me to find that no

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legal presentation ever took place, and, therefore, the document cannot have been legally registered. Section 85 and the judgment quoted from the Allahabad Series of I. L. Reports, Vol. I, p. 465, appear to apply to errors in procedure after a document has been properly presented for registration, and do not confer validity on the registration of a document which has not been legally presented. A decision to this effect may, in a particular instance, inflict loss on a *bona-fide* purchaser or other intending to register; but, on the other hand, if the registration in this instance be held to be legal, the place of registration can never again be held to be material,—no evidence having been shown in this case why the document should not have been presented in the place required by law, namely, the sub-registrar's office.

“ I, therefore, find that the document in question has not been legally registered. It is, therefore, inadmissible in evidence, and the plaintiff's case falls to the ground.”

The plaintiffs, therefore, appealed to the High Court.

Shantaram Narayan and *Shivram Bhandarkar* for the appellants.—The sole question for decision was whether the registration of the plaintiff's deed of sale is valid. Section 35 of Act VIII of 1871 by which this case was governed, permitted the presentation of a document at the residence of any person intending to register it on special cause being shown. This language included the obligors as well as the obligees. The sub-registrar was satisfied with the cause shown for not presenting the deed at his office, and he accepted it at the residence of one of the executants. His act is not only not irregular, but cannot be questioned; *Shoe Shunkur Sahoy v. Hirdey Narain Sahu* ⁽¹⁾; *Mohammed Ewaz v. Birj Lall* ⁽²⁾; *Sah Mukhun Lall Panday v. Sah Koondun Lall* ⁽³⁾. But assuming, without granting, that the sub-registrar acted irregularly, there was nothing to show he acted otherwise than *bona-fide*. His act was, therefore, protected by section 85 of the Act, and was not invalid. At best, his error was one of procedure specially provided for in that section.

Nanabhai Haridas, Government Pleader, and *Gokuldas Kahandas Parekh* for the respondents.—If there was an impro-

(1) I. L. R. 6 Calc. 25.

(2) L. R. 2 Ind. Ap. 210.

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

priety in regard to the place of presentation it involved a question of jurisdiction, not one merely of procedure. The Appellate Court had found that the cause set up for not presenting the deed at his registration office—viz., Khatija's illness—was not sufficient. The precedents cited did not meet the present case. A plaint presented out of Court could not be accepted. The Court would have no jurisdiction to accept it; nor would a registrar have jurisdiction to accept a document unless presented at the right place and time.

The judgment of the Court was delivered by

MELIVILL, J.—We think that the Courts below have construed the provisions of the Registration Act (Act VIII of 1871) with unnecessary stringency. The irregularity alleged as rendering the registration of exhibit No. 3 invalid is that the sub-registrar allowed it to be presented at the residence of Bai Khatija one of the executants, and not at his own office. If this was an irregularity, it would, in our opinion, come within the provisions of section 85 of the Act, which enacts that “nothing done in good faith pursuant to this Act, by any registering officer, shall be deemed invalid merely by reason of any defect in his appointment or procedure.” It has not been even suggested that the sub-registrar in this matter acted otherwise than in good faith. But we see no reason for holding that any irregularity has been committed. The ordinary rule, no doubt, is that every document shall be presented for registration at the registration office. But section 31 provides that the registering officer may, on special cause being shown, attend at the residence of any person intending to register any document. The special cause shown in the present case seems to have been that Bai Khatija was sick. The Acting Assistant Judge has stated his opinion that she was not sufficiently sick to prevent her from appearing at the sub-registrar's office. But this was a question which it was for the sub-registrar to determine, and his decision on the point cannot be impeached. It would lead to the greatest inconvenience and injustice if the registration of a document were to be held invalid merely because a Civil Court was not satisfied that a case of sickness, which satisfied the registering officer, was sufficiently made out. Another objection taken by the Court below to the

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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.