We observe that in the Courts below the appellants from the very commencement objected that no proceedings had been taken to enforce the decree since the 30th November 1861. It was, therefore, on respondents to show that proceedings had been taken since that period, and in this particular case, to prove service of summons on the 1st July 1863.

Respondent's case, then, is that the Nazir's return is *prima-facie* evidence of service; and that, until appellants have rebutted this, service must be held to have been duly made; and this was the opinion of the Courts below; and in support of it Mr. Sandel for respondents relies on the cases reported in Volume VI., Weekly Reporter, pages 74 and 97, Miscellaneous Rulings, and Section 222 of the Civil Procedure Code.

In the two cases relied on, we observe that the Nazir's return, the evidence of service mentioned, was not in the first case apparently, and in the second case certainly, disputed, and Section 222 simply directs the Nazir to make a return, but does not, in our opinion, in any way constitute that return to be legal evidence, and certainly not when, as in this case, the return is disputed.

We think, therefore, that the cases and the law relied on for respondents do not support their contention.

On the other hand, there is a case on which Mr. Twidale relies for appellant to be found at page 11 *et seq.*, Weekly Reporter, Vol. III., Miscellaneous Rulings, which seems to us to be exactly in point, and which has our entire concurrence.

In this, the Chief Justice and Mr. Justice Loch, a majority of a Bench of three Judges, held that a Nazir's return (pages 14 and 15) was *per se* no legal evidence at all of service of notice. Applying this case, we find that appellant's objection is good, and that the service of notice in this case is not supported by any legal evidence.

We, therefore, remand the case to the Lower Appellate Court, with instructions to transmit it to the Court of first instance in order that either party may have the opportunity of showing by legal evidence whether notice was served on the 1st July 1863. If it was, the Court will permit execution to proceed, and, if it was not, will refuse such permission. Costs will follow the ultimate decision of the case.

The 1st June 1868.

Present:

The Hon'ble J. B. Phear and C. Hobhouse, *Judges.*

Certificate under Act XXVII., 1860.

Case No. 183 of 1868.

Miscellaneous Appeal from an order passed by the Judge of the 24-Pergunnahs, dated the 18th February 1868.

Bama Kallee Dossee, *Appellant.*

Baboo Bungshee Dhur Sein for Appellant.

To entitle an applicant to a certificate under Act XXVII. of 1860, it is not necessary for him to show that debts are actually due; it is sufficient, if circumstances render it possible, that debts may be due or may accrue within the jurisdiction of the Court.

Phear, J.—We think that it is not necessary, in order to entitle an applicant to a certificate under Act XXVII. of 1860, that he should satisfy the Court that debts are actually due at the time of the application. It is quite sufficient to show that there are assets, and that circumstances exist to render it probable or possible that debts may either be due as a matter of fact, or may eventually accrue due within the jurisdiction of the Court. It seems that the sole ground upon which the Judge has refused a certificate to the present applicant is, that she has failed to satisfy him that there are debts actually due to the estate of the deceased Huree Narain Mundul, and as we think him wrong upon this point, we reverse his decision, and direct that a certificate be issued to the applicant.