The plaintiff, as we have already mentioned, also refers to the admissions made by the defendant upon different occasions—admissions of tenancy to the plaintiff or his predecessors. The learned Counsel for the special appellant has argued with very great force against the view which has been taken by the Lower Appellate Court in regard to the non-authenticity of the documents in which these admissions appear. We desire only now to say that we think that the conclusions of the Lower Appellate Court have been, as far as we can see, legitimately drawn from evidence before it, and whether or not, had we been sitting as Judges of the value of evidence, we should have arrived at the same results as those which the Lower Appellate Court arrived at, we feel that here in a special appeal there is not any ground of objection upon which we ought to interfere with the decision of the Court below on this head. It is not necessary that we should go further in detail in discussion of the judgment of the Lower Appellate Court. The only mode in which the plaintiff proposed to establish his title to the land as against the defendants was by proving that they were bound by the contract and admissions exhibited in the alleged kubooleut. If that document fails to be evidence, the whole of his structure of title necessarily falls to the ground, because the other admissions of the defendants, taking them to be real admissions, are so incomplete and so dependent upon reference to the undetailed contents of an unknown pottah, that it would be impossible to say, in our mind, that the Lower Appellate Court would be wrong in refusing to pass a decree in favor of the plaintiff upon these admissions alone, even assuming them to have been really and actually made. The Lower Appellate Court, however, not only did not say that these admissions had been made, but found as a fact that they had not been made, and, therefore, the hypothesis that we make would not be of itself sufficient to authorize our sending back the case for further trial. In our opinion, the plaintiff has, as the record stands after the rejection of evidence by the Lower Appellate Court, failed to make out a title to eject the defendants, and we think that there is no ground of objection to the decision of the Lower Appellate Court for having rejected from the record that portion of the evidence in respect of which the special appellant now complains. Consequently, we think that this special appeal should be dismissed with costs.

The 1st June 1868.

Present:

The Hon'ble Dwarkanath Mitter and C. Hobhouse, *Judges.*

Evidence—Nazir's return—Notice.

Case No. 132 of 1868.

Miscellaneous Appeal from an order passed by the Judge of Sarun, dated the 31st December 1867, affirming an order passed by the Principal Sudder Ameen of that District, dated the 4th May 1867.

Shah Koondun Lall (Judgment-debtor), *Appellant,*

versus

Noor Ali (Decree-holder), *Respondent.*

Mr. R. E. Twidale for Appellant.

Mr. M. L. Sandel for Respondent.

HELD (following the ruling of a majority of a Bench of three Judges) that a Nazir's return is no legal evidence of service of notice.

Hobhouse, J.—THE facts are admittedly as follows :—

In execution of a decree of date the 17th of August 1848, the decree-holders (respondents) were in time up to the 30th November 1861.

The next application for execution was made on the 23rd February 1863, and it is alleged that on this occasion service of notice was made on the judgment-debtors (appellants) on the 1st July 1863.

If this notice was duly served, it is admitted that respondents are in time; if it was not, it is admitted that execution was barred by the application of the Statute of Limitation.

The Courts below have found the notice duly served solely on the evidence of a Nazir's return to that effect, and in special appeal it is urged that this return is no legal evidence at all of the alleged service.

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.