[FISHER, C.J. AND STUART, J.]

FISHER, C.J. & STUART, J. 1922

May 23

CHRISTO ROMANI

v.

EMILIA SKOULLOU.

PRE-EMPTION—MEJELLE, ART. 1030—SECOND CLAIM.

The second claim to exercise a right of pre-emption under Art. 1030 *of the Mejelle must be made in such a way that the witnesses know that the first claim under Art.* 1029 *has been made and that they are witnesses of the second claim.*

This was an appeal from a judgment of the District Court of Nicosia, dismissing a claim to exercise a right of pre-emption on the ground that the necessary formalities had not been complied with.

Clerides and *Varlaam* for the Appellant.

N. G. Chrysafines for the Respondent.

Judgment: It is sufficient for the purposes of our judgment to deal with the point raised with regard to the second claim under Art. 1030. The latter part of that Article provides for the making of a second claim in the presence of the seller before witnesses, and gives the form in which it shall be made as follows:—

" I hear you have sold such an immoveable property to such a one, " therefore, I have the right of pre-emption and I have made a claim " of pre-emption; now also I claim it: be witnesses." (See *Yossif v. Nami*, C.L.R., VII. 28 in which a translation of the whole Article is given).

It has been held that the exercise of the right of pre-emption should be confined to cases in which the conditions under which it is exercisable have been strictly observed. In the Hedaya (Hamilton's Hedaya by Grady, 2nd edition at p. 548) it is stated that " the existence of the " right of shuffa is repugnant to analogy, as it involves the taking " possession of another's property contrary to his inclination, whence " it must be confined to those to whom it is particularly granted by the " Law," and later (p. 551 of same edition) it is laid down that in making the second claim before witnesses the claimant must say " I have already claimed my privilege of shuffa, and now again claim it: " be therefore witness thereof."

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It would seem therefore that the second claim must be made in such a way that the witnesses must know that the first claim, under Art. 1029 of the Mejellé, has been made and that they are witnesses of the second claim.

This view appears to accord with the view taken by the Courts in India. See Wilson's Digest of Anglo-Mohammedan Law, 3rd edition, p. 395, par. 376. No reference to the first claim was made in the second claim in this case and therefore we must uphold the decision of the District Court.

Appeal dismissed with costs.