

HUTCHIN-  
SON, C.J.  
&  
TYSER, J.  
1905

[HUTCHINSON, C.J. AND TYSER, J.]

ELIZA YOSSIF,

*Plaintiff,*

*v.*

SHEVKET BEY MUSSA NAMI EFFENDI,

*Defendant.*

Dec. 28

PRE-EMPTION—ADJOINING OWNERS—SECOND CLAIM—TALEB TAQRIR VE  
ISH-HAD—SHUFA'—MEJELLE, ART. 1030.

*The Law does not require that the second claim to exercise a right of pre-emption (taleb taqrir ve ish-had) should be made in the vicinity of the property sold if it is made in the presence of the purchaser.*

This was an appeal of the Defendant from the judgment of the District Court of Nicosia.

The facts were as follows:—

The Defendant bought a house adjoining property of the Plaintiff and the Plaintiff claimed to exercise her right of pre-emption.

The Defendant contended amongst other things that the Plaintiff had not made a second demand (taleb taqrir ve ish-had) in the manner prescribed by the Law.

The evidence shewed that the Plaintiff made the second claim (taleb taqrir ve ish-had) in the presence of witnesses and the purchaser, but that the claim was not made in the vicinity of the thing sold.

*Pascal and Artemis* for the Appellant.

*Kyriakides and Sevastly* for the Respondent.

The judgment of the Appeal Court so far as regards the point with which this report is concerned was as follows:—

*Judgment:* There is no necessity that the demand should be made in the vicinity of the property sold if it is made in the presence of the purchaser.

Art. 1030 of the Mejlé is incorrectly translated in the English translation. That Article is as follows:—

“After the claim muwassebe, the person having the right must make a claim formally and before witnesses (taleb taqrir ve ish-had).”

“Thus, it is necessary for him to say, in the presence of two persons, being near the thing sold ‘I hear such a one has bought this immovable property,’ or in the presence of the purchaser, ‘I hear you have bought such an immovable property,’ or, if it be still in the hands of the seller in his presence ‘I hear you have sold such an immovable property to such a one,’ therefore, I have the right of pre-emption and I had made a claim of pre-emption; now also I claim it; be witnesses.’”

It is quite clear that this Section does not require that the claim if made in the presence of the purchaser should be made in the vicinity of the thing sold.

*Appeal dismissed.*