

the vendor, or the purchaser." The pleader argues that the word "against" does not mean "in the presence of." Bearing in mind, however, the general scope of the law and the strictness which has to be followed in the pre-emption cases which are contrary to the ordinary policy of civil rights, the affirmation before witnesses is required to be in the presence of the vendor and the purchaser in order that they may know what is being done against their interests. So that from the very passage that the pleader for the special appellant cites in his favor, it is quite clear that whether it be the vendor or the purchaser, whoever is in possession of the lands, should be present to witness to the affirmation.

In this view, we think that the judgment of the Lower Appellate Court is perfectly correct. We, therefore, dismiss this special appeal with costs.

The 1st June 1871.

Present :

The Hon'ble F. B. Kemp and F. A. Gloyer,
Judges.

**Measurement papers—Nazir's report
—Evidence.**

Cases Nos. 2616, 2617, and 2623 of 1870.

Special Appeals from a decision passed by the Subordinate Judge of Sarun, dated the 12th September 1870, affirming the decisions of the Sudder Moonsiff of that District, dated respectively the 25th March and 18th May 1870.

Gobind Muhtoo and others (Plaintiffs)
Appellants,

versus

Goopee Bhugrut and others (Defendants)
Respondents.

Baboo Kishen Succa Mookerjee for Appellants.

Baboo Debender Narain Bose and Bama Churn Banerjee for Respondents.

Measurement papers cannot be treated as inadmissible in evidence because set aside by decisions of the lower Courts, if those decisions have been reversed by the High Court.

The report and map of a Nazir who is not examined in a case are no evidence whatever.

Kemp, J.—It is admitted that one decision will govern these three appeals. The plaintiff sued for possession of a clump of bamboos and one dhoor of land, valuing his suit at 10 rupees. The plaint alleges that the clump of bamboos and the land on which they stand appertain to the plaintiff's share of Phâut Kalan, and prays that the decision of the Collector dated the 17th March 1869, be reversed. The defendant's allegation is that the clump of bamboos and the land claimed by the plaintiff appertain to Phâut Khoord. Both Court have dismissed the plaintiff's claim.

In special appeal two grounds are taken ; 1st, that the lower Courts were wrong in holding the thakbust map and other measurement papers as bad on account of their being set aside by the decisions dated 16th May 1867 and March 1868, as these decisions were reversed by this Court on the 23rd of November 1868 ; and 2nd, that the lower Courts were wrong in relying on the report and map prepared by the Nazir of the Collectorate, for they cannot be taken as evidence in this case.

We think both these grounds are good grounds. It does appear on referring to the decision of this Court of the 23rd of November 1868 to be found in Volume X, Weekly Reporter, page 396, that the decisions referred to by the lower Courts were reversed by this Court, and therefore the plaintiff was clearly entitled to have a finding upon these documents, namely, the thakbust khusrah papers and map.

On the 2nd ground, we are clearly of opinion that the report and map of the Nazir, who has not been examined in the case, is no evidence whatever.

The case must, therefore, go back for a proper trial and in order that the plaintiff's documents may be considered and a fresh decision passed.

Costs to follow the result.