lowance, he decided that in this case a double period was not necessary and whether he was right or wrong is not a question of law."

With this decision I fully agree. I quite admit that cases may arise in which a person aggrieved by a decision may apply separately for copy of judgment and for copy of decree and may claim that both periods should be allowed as requisite. But in this case no reason has been shown for separate applications. All that has been suggested is that Sher Singh may have first applied for copy of judgment, merely to see whether he would appeal, and then, having made up his mind that he would appeal, applied for copy of decree. This may have been the case, but the fact remains that he could easily have applied for both copies at once. Even had he afterwards made up his mind that it was not worth his while to appeal, the extra expenditure involved in getting copy of decree as well as copy of judgment would have been slight, and if merely to avoid the risk of spending a little extra money he chose to apply first for copy of judgment only, I do not see how he can now say that both periods should be allowed as requisite. As to allowing any extension under S. 5, I need only remark that if Sher Singh had exercised due diligence he could have filed his appeal on 7th or 8th of June, when it would have been within time, even allowing credit only for the time spent in getting copy of judgment. He had his copy of judgment in May, so he could easily have got his grounds of appeal drafted and could have filed his appeal accompanied by copies of both judgment and decree on 7th or 8th June. The appeal is dismissed with costs.

R.M./R.K. *Appeal dismissed.*

A. I. R. 1918 Lahore 30

SCOTT-SMITH AND LE ROSSIGNOL, JJ.

Mahomed Mir and *others*—Plaintiffs—Appellants.

v.

Faizul Hassan and *others*—Defendants—Respondents.

Second Appeal No. 1382 of 1913, Decided on 20th February 1918, from decree of Addl. Divl. Judge, Delhi, D/- 26th March 1913.

Evidence Act (1872), S. 92—Sale deed—Oral evidence to show that it was mortgage is inadmissible—Pre-emption—Right of, accrued to pre-emptor as sons as deed of sale is executed.

A deed of sale, contained a stipulation that the sale was an out and out one and that there was no agreement to reconvey the property. It was duly executed and registered. The next day the vendee executed an agreement, which was also duly registered to reconvey the property sold by the deed of sale to the vendor, in case the latter repaid the purchase-money together with the price of improvements within two years. One *F.* instituted a suit for pre-emption of the property:

Held: (1) that the sale-deed being an out and out sale in express terms, as soon as that sale was completed the right of pre-emption accrued and *F.* was, therefore, entitled to a decree: (2) that oral evidence to show that at the time of the execution of the sale-deed the agreement to reconvey was in contemplation was inadmissible under S. 92, Evidence Act. [P 31 C 1]

Obiter dictum—Had the litigation lain solely between the vendor and the vendee, it might have been held that the two transactions taken together amounted merely to a conditional sale or to an English mortgage. [P 31 C 1, 2]

Muhammad Iqbal—for Appellants.

Fazl-i-Hussain—for Respondents.

Judgment.—On 13th July 1911 Nasir Shah, son of the original plaintiff Mt. Nasira Begam purchased a stamp paper on which the endorsement by the stamp vendor is to the effect that the paper is to be used for engrossing a deed of conditional sale. On 14th July 1911 a deed of sale was executed by Mt. Nasira Begam in favour of Mutmaz Hussain, her relation. The deed contains a distinct stipulation that the sale is an out and out one and that there is no agreement to reconvey the property. This stipulation was entered in the deed apparently to meet any objection that might have been based on the stamp vendor's endorsement. The deed of sale was registered on 15th July 1911 and on the same day, the vendee purchased another stamp paper on which he executed an agreement to reconvey the property sold by the deed of the sale of 14th July 1911 to Mt. Nasira Begam, provided that she repaid the purchase-money together with the price of improvements within two years. This agreement to reconvey was registered on 17th of July 1911. On 6th of July 1912 Faizul Hassan, the maternal uncle of the vendee, instituted a suit for pre-emption, whilst on 12th July 1912 Mt. Nasira Begam, the plaintiff in this case, instituted a suit for possession of the house in terms of the agreement executed by Mumtaz Hussain on 15th July 1911. Mt. Nasira Begam succeeded in the first Court, but the learned Additional Divisional Judge on appeal dismissed her suit and gave Faizul Hassan

a decree for possession by pre-emption of the property sold, holding that the sale of 14th July 1911 was an out and out sale and that the pre-emptor is not bound by the subsequent agreement entered into by the vendee to reconvey the property under certain conditions and within a certain time to the vendor.

Mt. Nasira Begam has come to this Court on second appeal, and it has been argued before us that as the interval of time between the deed of sale and the agreement to reconvey was only one day, the transactions should be considered as one only and consequently the transaction amounted to a mortgage and no right of pre-emption accrued. The following cases have been cited before us: *Palanippan* v. *Subbaraya Gounden* (1), *Bhagwan Sahai* v. *Bhagwan Din* (2), *Ram Saram Lal* v. *Amirta Kuar* (3) and *Balkishen Das* v. *W. F. Legge* (4). These cases, however, are not of great value in connection with this case, for in them the relation of the vendor and the vendee or the mortgagor and mortgagee is considered. In this case the position of a third party, viz., the pre-emptor, has to be considered and that circumstance distinguishes this case from those cited. It would appear that the original intention of the parties was to execute a deed of conditional sale, but we are not concerned with the original intention of the parties but only with the intention of the parties at the time when the deed of the sale was executed. At that time the parties had resolved to abandon their original intention and clearly determined, for reasons best known to themselves, on the execution of an out and out sale. It is no doubt true that at that time the agreement to reconvey was in contemplation, but we are unable to receive any oral evidence as to a contemporaneous oral agreement varying the terms of the sale-deed, for such evidence is barred by S. 92, Evidence Act. As a fact the sale-deed executed on 14th July 1911 was an out and out sale in express terms and as soon as that sale was completed, the right of pre-emption accrued. Had the litigation lain solely between the vendor and the vendee, we might have held that the two transactions taken together amounted merely to a conditional sale or, perhaps, to an English mortgage, but we find that on 14th July 1911 an absolute sale was accepted by the vendor and the vendee and that transaction opened the door to pre-emption. In this view we agree with the learned Aditional Divisional Judge that the sale from the pre-emptor's point of view was a sale absolute and he is entitled to his decree. We dismiss the appeal, but in the peculiar circumstances of the case we leave the parties to bear their own costs.

R.M./R.K. *Appeal dismissed.*

1. A I R 1914 Mad 37=22 I C 4.
2. (1890) 12 All 387=17 I A 98 (P C).
3. (1881) 3 All 369 (F B).
4. (1900) 22 All 149=27 I A 58 (P C).

A. I. R. 1918 Lahore 31

LEROSSIGNOL AND WILBERFORCE, JJ.

Rattan Devi—Plaintiff—Appellant.

v.

Muno—Defendant—Respondent.

Second Appeal No. 99, of 1915, Decided on 9th May 1918, from decree of Addl. Dist. Judge, Delhi, D/- 5th October 1914.

Custom (Punjab)—Adoption—Performance of ceremonies is not necessary—Manifestation of unequivocal intention to clothe adoptee with legal status of son is necessary—Form of manifestation explained.

In a Punjab the performance of an elaborate ritual or religious ceremony is quite unnecessary to the validity of an adoption, but there is no authority for the view that mere treatment unaccompanied by a formal giving and taking of the child to be adopted, satisfies the conditions necessary to a legal adoption. Adoption may be of two kinds, formal and informal, but it is only the adoption of the first description which is recognized by law and which confers upon the adoptee the status of son to his adoptive father. In other words, the law requires from the adoptor a manifestation of his unequivocal intention to clothe the apoptee with the legal status of his son. Such a manifestation of the adoptor's intention can be made either by a formal document combined with a proper treatment or by a formal giving and taking of the child. [P 32 C 1, 2]

Gokal Chand Narang—for Appellant.

Moti Sagar—for Respondent.

Judgment.—The suit is one for possession of property left by Bishambar Nath who died on 30th April 1912; and the plaintiff, his widow, is opposed by the deceased's sister's son, who alleges that he was adopted by the deceased. The parties are Sarsut Brahmans of Delhi and the questions for decision were firstly, the factum of the adoption, secondly, its validily. The Courts below found for the defendant, but the learned Additional Divisional Judge has given the plaintiff-