3rdly. That the payment of 1,000 rupees by defendant's orders, which might act as a ratification of the act done without authority, is not satisfactorily proved. The Judge, therefore, dismissed the plaintiff's suit.

Plaintiff now appeals specially, urging that the Judge has imported in to the case matters not arising out of the pleadings; that the authority of Monie was not questioned, had he been the gomashtah; the whole case of the defendant was made to rest on the fact that the gomashtahship of that person ended in 1265; and, as this has been found adversely to the defendant, a decree should have been passed in plaintiff's favour.

We think that the contention of the plaintiff is sound. When a party files an answer like that in the present case, which impliedly admits a liability, if a particular office was held by a party, and avoids that liability simply by pleading that the particular office was not so held, the only issue to be tried is, whether the party held that office at the time; and, on that fact being proved adversely to the defendant, a decree must pass against him. It is, of course, quite right for the Principal Sudder Ameen to raise any legal points, which arise naturally out of the facts found; but, as before remarked, when a fact is impliedly admitted, to lose sight of the admission, and to raise points of law independent of it, is beyond the proper duty of the Court. As the Appellate Court, though it finds the payment of the 1,000 rupees by defendant's order not proved, has found that Monie was defendant's gomashtah when the sum claimed was taken from the plaintiff by him, the order of the first Court, decreeing that amount to plaintiff, must stand good with costs of the lower Courts and of this Court also.

The 17th May 1865.

Present:

The Hon'ble E. Jackson and F. A. Glover, *Judges.*

Easement—Right of light and air.

Case No. 3613 of 1864.

Special Appeal from a decision passed by the Principal Sudder Ameen of Hooghly, dated the 16th September 1864, affirming a decision passed by the Additional Sudder Moonsiff of that District, dated the 10th October 1863.

Puran Mudduck (Defendant), *Appellant,*

versus

Ooday Chand Mullick and others (Plaintiffs), *Respondents.*

Baboo Kedarnath Mojoomdar for Appellant.

Baboo Luckhee Churn Bose for Respondents.

Ancient lights cannot be obstructed by the owner of the adjacent land building on it, so as to obscure the light and air always enjoyed. Whether the party has or not other windows on another side of his premises is immaterial.

This was a suit for possession of a certain strip of land adjacent to the plaintiff's (special respondent's) house, and to restrain the defendant from blocking out light and air from the special respondent's premises by building exactly in front of, and abutting on, them.

Both lower Courts found that the plaintiff had no title to the land sued for; but they restrained the defendant from raising his wall or building so as to obstruct the light and air which had all along been enjoyed by the plaintiff through two windows against which the new wall was in process of erection.

It is urged in special appeal:—

1st.—That, as the land has been proved to belong to special appellant, he is entitled to do what he likes with it, and build on it at his pleasure; and

2ndly.—That the lower Courts have restrained the special appellant's building more than is necessary to the special respondent's enjoyment of light and air.

Neither of these objections is tenable. The *first* is diametrically opposed to the law of easements, which provides that ancient lights cannot be obstructed by a party owning the neighbouring land and building on it, so as to obscure the light and air always enjoyed. It is no answer to this to plead that the party complaining has other windows on another side of his premises. He is entitled to retain the light and air he has always had, and the owner of the adjacent land cannot obstruct it.

For the rest, the Principal Sudder Ameen forbade the special appellant to build a second story to the *dalan*. This was manifestly the only possible way of giving the special respondent the relief he sought. It would have been ridiculous to have ordered, as the special appellant now wishes, apertures to have been left opposite the special respondent's windows through which he might have retained the light sought for; for, if it

had been possible so to arrange matters regarding the light, the special respondent would still have been shut out from his ancient supply of air.

We think that the Principal Sudder Ameen's order was both legal and proper, and we accordingly dismiss the special appeal with costs.

The 17th May 1865.

Present:

The Hon'ble H. V. Bayley and J. B. Phear, *Judges.*

Fraud of father—Son when bound by.

Case No. 311 of 1864.

Regular Appeal from a decision passed by the Judge of Jessore, dated the 27th May 1864.

Bhuggobutty Dossee and others (Defendants), *Appellants,*

versus

Kishen Nath Roy (Plaintiff), *Respondent.*

Baboos Gopal Lal Mitter and *Onoocool Chunder Mookerjee* for Appellants.

Baboo Kishen Kishore Ghose for Respondent.

Suit laid at Rupees 2,990 9 as. 16 gds.

A son cannot obtain a decree when suing as heir to regain property, alleging his father's fraud as the cause of the action.

In this case plaintiff, as manager for the minor sons of Soorjnath Doss, deceased, sued for a declaration of title to certain landed property. It is alleged in the plaint that Soorjnath, in his life-time, and in order to avoid the claim of creditors, executed two hibbanamahs, or deeds of gift, on the 12th Bhadro 1255: one in the name of his wife Mohessuree, the mother of the minor, and the other in the name of his *second* wife Bhuggobutty; that Soorjnath remained in possession after that act till he died on the 6th Assin 1256, having appointed his nephew, Kasheenath Ghose, and his old servant, Fukeer Chand Mitter, defendants, as managers of the estate *for the minor.* It is also alleged by plaintiff that Kasheenath fabricated a mourosee pottah, dated 11th Bhadro 1259, purporting to have been given by Bhuggobutty, and in the benamee of one Kala Chand Holdar; also that Kasheenath then caused a case under Act IV. of 1840 to be brought, and, under cover of it, ousted the minor from some lands, and did so also from other property by selling the minor's property in execution of decrees for the debts of the widows.

Defendant Kasheenath pleads that the two deeds of gift are valid and not in fraud of creditors; that the widows held possession under them, and duly granted the mourosee pottah and other leases under that title. The defendants Bhuggobutty and Fukeer Chand support the answer of the defendant Kasheenath.

The lower Court has held that the hibbanamahs are fictitious and fradulent documents, and that the leases and sales under them are invalid.

It was pleaded in the lower Court that, if this were so, the fraud was that of plaintiff's father to defeat creditors; and that plaintiff, though a minor, could not sue to obtain this property on the ground of his father's fraud.

The lower Court, however, decided that, as the minor did not accept nor join in his father's fraud, and the widows were only unconscious instruments in the hands of the defendant Kasheenath, the minor was not to be bound in such a case.

The case was decreed in plaintiff's favour accordingly, and the costs of Mohes Chunder Chuckerbutty were charged against plaintiff, on the ground that the former had been unnecessarily made a defendant by the latter.

The defendant appeals, urging amongst other grounds that, as the plaintiff comes into Court on his right as heir from his father, whose acts have all been held by the lower Court to have been fraudulent, he cannot recover on the ground of his father's acts being fraudulent, but must be bound by his father's fraud.

We think that this objection is valid. The case of Obhoy Churn Ghuttuck, December 1859, page 1639, is quite in point, and must be followed. We quite concur in the concluding words of the judgment in it:—

"A deed may be avoided on the ground "of fraud, but then the objection must come "from a person neither party nor privy "to it, for no man can allege his own fraud "in order to invalidate his own deed. "This rule is, we think, a very wholesome "one in this country. It is well that the "natives of this presidency should under-"stand that, when they execute fictitious "deeds for the purpose of defeating their "creditors, avoiding an attachment, or effect-"ing any other fraudulent purpose, they "place themselves completely at the mercy