The 17th May 1865.

Present:

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

Bona fide purchase—Refund of purchase-money—Caveat emptor.

Case No. 3562 of 1864.

Special Appeal from a decision passed by the Judge of Beerbhoom, dated the 20th September 1864, reversing a decision passed by the Principal Sudder Ameen of that District, dated the 26th February 1864.

Kishen Mohun Shaha (Plaintiff), *Appellant,*

versus

Ram Chunder Dey (Defendant), *Respondent.*

Baboos Sreenath Doss and *Bhuggobutty Churn Ghose* for Appellant.

Baboos Luckhee Churn Bose and *Banee Madhub Banerjee* for Respondent.

A *bonâ fide* purchaser is entitled to refund of purchase-money in a case where, some dispute having arisen as to the purchase, the matter was referred to arbitration, and it was held that the vendor had no authority to sell. The principle of *caveat emptor* does not apply to such a case.

THE allegation of the plaintiff in this case is that he purchased a certain property from Latuck Chunder through his son Ram Chunder. There was some dispute as to the purchase, and the case was referred to arbitration, when it was held that Ram Chunder had no authority to sell. Plaintiff now sues to recover from Ram Chunder the purchase-money

The first Court decreed the claim; but the Judge, on appeal, is of opinion that "the principle of *caveat emptor* applies," and has refused the plaintiff any redress.

This is objected to on special appeal, and we think on good ground. If the plaintiff has paid Ram Chunder the consideration-money, he is entitled to refund under the circumstances stated, that is, if there has been no fraud on his part, and we do not see that any fraud is alleged—certainly it is not found by the Judge.

The judgment of the Lower Appellate Court is reversed, and the case remanded for re-decision.

The 17th May 1865.

Present:

The Hon'ble C. B. Trevor and G. Campbell, *Judges.*

Pleadings—Raising of legal points by Court—Admissions.

Case No. 3415 of 1864.

Special Appeal from a decision passed by the Judge of Dacca, dated the 29th August 1864, reversing a decision passed by the Principal Sudder Ameen of that District, dated the 23rd February 1863.

Gour Kishore Potedar and others (Plaintiffs), *Appellants,*

versus

Sheik Chitoo Bepary and others (Defendants), *Respondents.*

Baboo Hem Chunder Banerjee for Appellants.

Baboo Kalee Mohun Doss for Respondents.

A Court may raise any legal points which arise on the facts found; but where 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.

When a defendant files an answer impliedly admitting a liability, if a particular office was held by a party, and avoiding that liability simply by pleading that the particular office was not so held, the only issue to be tried is, whether that party held the office at the time; and, on that fact being proved adversely to the defendant, a decree must pass against him.

PLAINTIFF sued the defendant for the sum of 441 rupees with interest. He alleges that in 1268 one Monie, a gomashtah of the defendant, took from him in the course of business 1,441 rupees, granting him a hoondee on a Calcutta firm; that this hoondee on presentation was dishonored; that 1,000 rupees was paid to him on the 31st Srabun 1269 under defendant's order; but as the remaining sum remains unliquidated, he brings the present action.

The defendant denied liability, inasmuch as the party, who granted the hoondee and took the money, was not in his service in 1268; that that individual had left his service in 1265; and that he was not liable for any act done by him during that year.

The first Court round that the other person Monie was in defendant's service in 1868, and consequently he was liable.

On appeal, the Lower Appellate Court found: *1st.* That Monie was defendant's gomashtah in 1269. *2nd.* That there was no proof showing that that person could bind his principal in acts like the present; and

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