

**(1919) 02 CAL CK 0037**

**Calcutta High Court**

**Case No:** None

Binode Behari Pati

APPELLANT

Vs

Chaudhuri and Co.

RESPONDENT

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**Date of Decision:** Feb. 24, 1919

**Citation:** 50 Ind. Cas. 453

**Hon'ble Judges:** Teunon, J; Newbould, J

**Bench:** Division Bench

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### **Judgement**

1. This Rule is directed against an order by which the learned Subordinate Judge of Burdwan allowed the plaintiff, who was the appellant before him, to withdraw his appeal and also the original suit with liberty to bring a fresh suit in respect of the same cause of action. In his order he has not stated what in his judgment were the sufficient grounds for permitting the plaintiff to take this course. But from the petition supported by affidavit before us and not controverted by the appellant, it appears that the plaintiff's reason for desiring to withdraw the appeal and suit was that he desired to adduce additional evidence. That is not a proper reason for permitting the plaintiff-appellant to withdraw his appeal and suit.

2. We, therefore, set aside this order and direct that the appeal be re admitted and heard and determined on the merits.

3. The plaintiff-appellant not appearing here we make no order as to costs in this Rule.