

# CALCUTTA HIGH COURT

Gopal Singh

Vs

Jhakri Rai

(Field and O'Kinealy ,JJ.)

07.08.1885

## JUDGMENT

### **Field, J.**

1. Two points are raised in this second appeal. First, it is said that the Judge in the Court below has received additional evidence without recording his reasons for so doing, as required by Section 568 of the Code of Civil Procedure; and that, therefore, this evidence was improperly received, and ought to be treated as if it were not on the record. We think that the provision of Section 568 as to an Appellate Court recording its reasons for admitting additional evidence is mandatory or directory merely, and not imperative; and we think that the fact that the Judge in the Court below did not comply with this provision (with which most certainly he ought to have complied), does not, however, render the evidence irrelevant.

2. The second point pressed upon us is that, inasmuch as the Judge in the Court below received additional evidence, this appeal ought to be treated as a first appeal, and the learned vakil ought to be at liberty to go into the facts; and in support of this argument a decision of the Madras High Court see *Hinde v. Brayon*<sup>1</sup> is relied upon. As at present advised we are not prepared to concur in this contention.

3. The appeal is dismissed with costs.