

statement by the parties giving the terms of a compromise. Where there is no specific withdrawal of the suit, the court must pass a decree in accordance with the compromise effected between the parties.

In our opinion the arbitrator ought in his award to have decided the question of the widow's right of residence and the manner in which it was to be satisfied.

As he has not done so, one of the matters referred has been left undetermined by the award and this being so, that court, in view of the language of paragraph 21 of the second schedule, ought to have rejected the application made under paragraph 20.

We therefore allow the appeal and set aside the lower court's order and reject the application. The appellant will have her costs in both courts.

Appeal allowed.

REVISIONAL CRIMINAL.

Before Mr. Justice Piggott.

EMPEROR v. LAL BIHARI*

Criminal Procedure Code, section 110—Security to be of good behaviour—Appeal—Judgement.

A court of Criminal Appeal dismissing an appeal summarily is not bound to write a judgement; but an appeal from an order requiring a person to furnish security to be of good behaviour is distinguishable from an appeal against a conviction in respect of an offence specifically charged. And in such cases a District Magistrate should not dispose of an appeal otherwise than by a judgement showing on the face of it that he has applied his mind to a consideration of the evidence on the record, and of the pleas raised by an appellant, both in the court below and in his memorandum of appeal.

THE facts of this case were as follows :—

An order was passed against Lal Bihari and two others by a Magistrate of the first class under section 110 of the Code of Criminal Procedure. They appealed against this order to the District Magistrate of Basti, who dismissed their appeal by the following judgement :—“ I see no reason for interference.

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HARI
KUNWAR
v.
LAKHMI
RAM JAIN.

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March, 29.

* Criminal Revision No. 124 of 1916, from an order of R. H. Williamson, District Magistrate of Basti, dated the 29th of November, 1915.

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Appeal dismissed." Lal Bihari thereupon filed an application in revision to the High Court.

Mr. T. N. Chadha, for the applicants.

The Assistant Government Advocate (Mr. R. Malcolmson) for the Crown.

PIGGOTT, J.—A very similar case to this was recently before this Court, *vide Sarwan v. Emperor* (1). The question of course is how far the procedure of a court of Criminal Appeal dismissing an appeal summarily can be held to be reasonably applicable to appeals under Chapter VIII of the Code of Criminal Procedure. I take it to be settled law that a court of Criminal Appeal dismissing an appeal summarily is not bound to write a judgement. This Court has, however, always maintained a right to interfere, in the exercise of its discretion, where there was reason to suppose that the appeal had not received fair and adequate consideration. An appeal from an order requiring a person to furnish security to be of good behaviour is certainly distinguishable from an appeal against a conviction in respect of an offence specifically charged, where the only matter for consideration may be the credibility or otherwise of certain direct and positive evidence. I think that in a case like the present it is not unreasonable for this Court to insist that the District Magistrate should not dispose of an appeal of this nature otherwise than by a judgement showing on the face of it that he has applied his mind to a consideration of the evidence on the record, of the pleas raised by the appellant, both in the court below and in his memorandum of appeal. At any rate I am not prepared to dissent from the view taken by a learned Judge of this Court in the case already referred to. I set aside the order of the District Magistrate dismissing the appeal of Lal Bihari in this case, and I direct that the said appeal be re-heard and tried according to law. I further transfer the hearing of this appeal from the court of the District Magistrate of Basti to that of the District Magistrate of Gorakhpur.

Re-hearing ordered.

(1) (1916) 14 A.L.J., 279.