

as if they were decrees, it does not provide that the amount of such an order should be paid in any of the ways mentioned in s. 257. As an instance, if at Chambers, an order for costs will be Rs. 7, Rule 44, 24th July 1874. Is that sum to be paid into Court, and to be drawn out at the expense of Rs. 5, provided by the Rules on the order to draw it out, or was it intended to burden the party needlessly with that fee on such a small amount? In my judgment the course taken on behalf of the defendant in paying the amount of the costs awarded by the order of the 18th of October was not correct. I think that s. 257 does not apply to the amount of costs awarded in applications, or under orders which are not decrees within the definition of s. 2 of the Code. The Court has, of course, power to make a special order in a fit case for payment of any moneys into Court. I do not recollect having heard, before this case, in practice of costs under mere orders which are not decrees, having been paid into Court under s. 257. Payment to the party authorised to receive costs on getting a receipt is usual. The plaintiff, therefore, is entitled to enforce payment in the usual way unless the money is paid to him. The question is a new one, and the plaintiff has got costs of execution, and therefore I will give no costs of this application.

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## APPELLATE CRIMINAL.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice, and  
Mr. Justice Parker.*

QUEEN-EMPRESS

against

BHARMAPPA.\*

1888.  
October 24.

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*Evidence—Confession, retracted—Corroboration, deposition of witnesses before magistrate read under Criminal Procedure Code, s. 288, insufficient.*

Where a prisoner was convicted of murder on a confession, retracted at the trial, corroborated by depositions read under s. 288 of the Code of Criminal Procedure, and also retracted at the trial:

*Held*, that the prisoner should not have been convicted on such evidence.

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QUEEN-  
EMRESS  
2.  
BHARMATTA.

APPEAL from the conviction and sentence of the Sessions Judge of Bellary (J. D. Goldingham) in case No. 25 of 1888.

Prisoner was convicted of murder and sentenced to transportation for life.

The facts necessary for the purpose of this report are stated in the judgment of the Court (Collins, C.J., and Parker, J.).

*The Acting Public Prosecutor (Subramanya Ayyar)* in support of conviction.

JUDGMENT.—The Sessions Judge has convicted the prisoner upon the depositions given by prosecution witnesses 1—3 before the committing magistrate, which depositions were read in evidence under s. 288 of the Criminal Procedure Code. The statements made before the magistrate were retracted at the sessions. The only other evidence against the prisoner was his confession before the magistrate, which was also retracted at the sessions.

According to the rulings of this Court a retracted confession must be supported by independent reliable evidence corroborating it in material particulars—*Queen-Emress v. Rangji*(1); but we do not think depositions read under s. 288 of the Criminal Procedure Code and retracted at the trial are by themselves material corroboration. In this case they are the only corroboration and a conviction cannot be grounded upon such evidence only (*vide The Queen v. Amanulla*)(2). We are constrained, therefore, to hold that the prisoner should not have been convicted and that the sentence of the Sessions' Court should be set aside and the prisoner discharged.

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(1) 1 L.R., 10 Mad., 295.

(2) 12, B.L.R., App. 15.