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to the final determination of the Court on the subject; otherwise you might have a man lawfully in possession under a decree declaring his title to possession and you might have his opponent still entitled by reason of a statement in the judgment on which that decree was passed to question the title of the man in possession. We consequently hold that, so far as s. 13 of the Code of Civil Procedure applies, the plaintiffs, and not the defendant here, are barred by the former suit. We dismiss this appeal with costs.

*Appeal dismissed.*

## APPELLATE CRIMINAL.

*Before Mr. Justice Tyrrell and Mr. Justice Blair.*

QUEEN-EMPRESS v. BANKHANDI.

*Practice—Sessions trial—Witness—Rejection by Court of Sessions of witnesses sent up by the committing Magistrate.*

It is the duty of a Sessions Court to examine all the witnesses sent up by the committing Magistrate. That Court is not justified in rejecting any of the witnesses so sent up unless it has good reason to believe that such witness came into the Court house with a predetermined intention of giving false evidence.

THE facts of this case, so far as they are necessary for the purposes of this report, sufficiently appear from the judgment of the Court.

The Public Prosecutor (The Hon'ble Mr. *Spankie*) for the crown.

The appellant was not represented.

TYRRELL AND BLAIR, JJ.—Bankhandi appeals against his conviction and sentence to death for murder. His case also comes before us for confirmation of sentence.

On the 11th February 1892, between 9 A.M. and noon, the appellant's wife was nearly decapitated with a hatchet, the property of and found in the house of the appellant. It was covered with blood. The only question in the case is whether Bankhandi, appellant, in a fit of rage, because his wife quarrelled with him about money lost in gambling, murdered her with the axe, or whether, as Bankhandi from the moment of the crime down to the end of his

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trial asserted, the woman was killed by Pal Singh and Jhandu Singh, the brothers-in-law of the appellant, who, as he said, was shortly afterwards grievously wounded in the throat by Pal Singh. There is no evidence in support of Bankhandi's story, and the case for the prosecution is well established by the medical and other evidence. The story of Bankhandi, both as to the death of his wife and as to the infliction of a wound or wounds on his own throat, is negatived almost conclusively by the medical evidence and largely by the statements of the villagers as to the events of the morning in question. We noticed with dissatisfaction that at the suggestion of the Court the prosecution withdrew, as witnesses against the prisoner, Ganga, his brother, Kallu, his father, and Musammat Prano, his mother. Two of these were mentioned in his first statement by the appellant as eye-witnesses of the attack upon himself, and it was equally objectionable from the point of view of the prosecution or of the defence that these witnesses who had been sent up by the committing Magistrate in his calendar should not have been examined. Courts are not competent when trying persons accused of criminal offences to pick and choose among the witnesses sent up by the committing Magistrate. It is their duty to examine all the witnesses, unless the Court has good and sufficient cause on the representation of the Government Pleader or other person charged with the prosecution to believe that the witness came into the Court house with a predetermined intention of giving false evidence.

The assessors agreed with the learned Judge in finding the accused guilty of murder, the only conclusion which could rationally have been formed on the evidence by persons of ordinary honesty and intelligence. We dismiss the appeal and, affirming the conviction and sentence, we direct that the sentence be carried into effect.

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