

## REVISIONAL CRIMINAL.

*Before Sir Louis Stuart, Knight Chief Judge.*

1929  
October, 17.

KING-EMPEROR (APPELLANT) *v.* GHASITEY AND  
OTHERS (COMPLAINANTS-RESPONDENTS).\*

*Criminal Procedure Code (Act V of 1898), section 337 and 339(3)—Pardon tendered under section 337 of the Code of Criminal Procedure—False evidence given by the person to whom pardon tendered—Sanction to prosecute for giving false evidence, when can be given—Public Prosecutor's certificate, necessity of.*

Where a person to whom pardon is tendered under section 337 of the Code of Criminal Procedure gives false evidence sanction for his prosecution under section 339(3) cannot be given unless the Public Prosecutor certifies that in his opinion the person who has accepted such tender has, either by wilfully concealing anything essential or by giving false evidence, not complied with the condition on which the tender was made.

Assistant Government Advocate (Mr. H. K. Ghose)  
for Crown.

STUART, C. J. :—The learned Sessions Judge has found that Ghasitey a person to whom a pardon was tendered under the provisions of section 337 of the Code of Criminal Procedure had given a false account of the dacoity participation in which he had admitted and had given false evidence. He has accordingly forwarded the record to this Court with an application that this Court should give sanction under the provisions of section 339(3) for the prosecution of Ghasitey on a charge of having given false evidence. The learned Counsel for the Crown has represented that no such sanction can be given unless the Public Prosecutor certifies that in his opinion the person who has accepted such tender has, either by wilfully concealing anything essential or by giving false evidence, not complied with the condition on which the tender was made and that there is no certificate

\*Other Criminal Reference No. 3 of 1929.

from the Public Prosecutor. This objection must prevail. In the absence of this certificate no prosecution can be sanctioned. I accordingly reject the application and direct that the record be returned.

1929  
KING-  
EMPEROR  
v.  
GHASNEY

*Application rejected.*

## APPELLATE CIVIL.

*Before Mr. Justice A. G. P. Pullan.*

MOHAMMAD ISMAIL KHAN (DEFENDANT-APPELLANT) v. 1929  
ABDUL GHAFFAR BEG, PLAINTIFF AND ANOTHER, October, 17.  
(DEFENDANTS-RESPONDENTS).\*

*Oudh Rent Act (XXII of 1886), section 70, applicability of—Presumption that there was no patta, where rent is paid on appraisalment—Admissibility of oral evidence showing acceptance of new rent by tenant where no patta—Civil Procedure Code (Act V of 1908), order XLI, rule 27—Appellate court's power to admit additional evidence—Additional evidence when to be admitted by appellate court—Guardian ad litem—Confession of judgment by guardian ad litem, admissibility and value of—Guardian and ward—Nazir's appointment as guardian of minor, propriety of.*

Section 70 of the Oudh Rent Act applies to those tenants who have already received a patta.

Where, therefore, it is not alleged that any patta had been granted previously, and because admittedly rent was paid on appraisalment it must be presumed that there was no patta, it is possible to admit oral evidence showing that the tenant had accepted the new rent.

An appellate court is no longer bound by the specific provisions of order XLI, rule 27 of the Code of Civil Procedure but is given wide discretion to admit additional evidence under the general principles of law. But before admitting such evidence the court must ascertain that it is necessary

\*Second Rent Appeal No. 56 of 1928, against the decree of S. Asghar Hasan, District Judge of Gonda, dated the 31st of July, 1928, reversing the decree of Babu Bhagwati Prasad Sinha, Assistant Collector, 1st Class and Treasury Officer, Bahraich, dated the 25th of February, 1928, dismissing the plaintiff's suit.