

Lahey was present when the resolution was passed, and it was read over to him. Lahey swears that he said nothing, but was not allowed to explain why he said nothing. The president of the company on the contrary says: "He thanked the directors for appointing him, and told them that he would get out at any minute they asked him"—this Lahey specifically denies.

It is rather indicated than proved that the property had been purchased by the company from Mrs. H-D. acting for herself, and as Lahey claimed (at least) in part for him, he claiming a one-third interest. Counsel for Lahey stated to the County Court Judge—upon the Judge saying: "He can't dispute the landlord's title"—"He has no title over us, we are as much owner as he is." Whereupon the learned Judge said: "That doesn't make any difference. I suppose the law goes this far, that if Mr. Hill is the owner of property and he "accepts a lease from you although he may have an interest in the property, he can't dispute your title." And it is quite manifest that the County Court Judge proceeded on the assumption that there was an acceptance by Lahey of the provisions of the resolution already spoken of. If the learned Judge so found after hearing all the evidence properly admissible, no one could quarrel with his determination—but he seems to have reached his conclusions with the fact before him that Lahey swore that he stood silent when the resolution was read, and without an explanation being permitted of his silence.

No doubt "silence gives consent" in many cases—and no doubt in many other cases silence implies assent. But silence is not conclusive; it may be explained. I can conceive of more than one explanation which would nullify every adverse inference to be drawn from this silence—I do not mention any in view of a continuation of the trial being the proper course in my opinion.

The Court was called upon to pass upon the question whether Lahey accepted the terms of the resolution; that depended upon (1) the relative credibility of Murphy and Lahey, and (2) the construction to be placed upon the facts as found by the Court to be. Lahey should have been allowed to give his explanation in order to enable the Judge to determine the amount of credit to be given to his testimony. It is a matter of every day experience that a trial tribunal forms a low opinion of the credit of a witness for a time only to change it when his full story is told. The explanation, too,