

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, would or might determine whether silence (if his story were accepted) was an assent.

It has been suggested that Lahey is, in any case, bound by another kind of estoppel. It is argued that his silence (if there was silence) and his conduct led the company not to take proceedings—that the company acted upon this silence. It is sufficient to say that there is no tittle of evidence of any such result.

I think there should be a new trial—the evidence already taken to stand, but to be supplemented as may be thought best. No doubt, the full facts of the title will be gone into unless the County Court Judge finds an estoppel.

As it may turn out that all the evidence adduced will not advance matters, I think the costs of this appeal and of the new trial, as well as the proceedings heretofore had, should be in the discretion of the County Court Judge.

The Divisional Courts have more than once said that County Court Judges should give reasons for the conclusions they arrive at: it seems necessary to repeat this once more.

BRITTON, J.:—It is to be regretted that the evidence tendered by Lahey in explanation of his alleged silence, when the resolution mentioned was read and passed in his presence, was rejected. Lahey was entitled in law to tell his whole story in regard to the particular transaction relied upon by the landlords to establish Lahey's tenancy. Simply because of the