which case is not available to me but a reference to it is found in Sarkar's Commentary on the Indian Civil Procedure Code[1]. In a case reported in *All India Reporter*[2], where the Court appointed a Commission to investigate and to report on the profits arising from certain property mortgaged, it was held that the Commissioner was not entitled to take evidence as to the possession of the property by any of the parties or the extent of that possession.

For the foregoing reasons the conclusion I reach is that Mr. Pope was not appointed a Commissioner within the meaning of section 430 of the Civil Procedure Code and that the order directing the defendant and his witnesses to appear before him was not justified in law. I therefore set aside the order of the learned District Judge. The defendant will have the costs of appeal and of the argument in the lower Court.

WINDHAM J.—I agree.

Appeal allowed.

1948 *Present :* **Nagalingam and Basnayake JJ.**

VEDIN SINGHO, Appellant, *and* MENCY NONA, Respondent

S. C. 491—D. C. Balapitiya, 39

Seduction—Corroboration of plaintiff's evidence necessary.

In an action to recover damages for seduction the evidence of the plaintiff must be corroborated in some material particular.

APPEAL from a judgment of the District Judge, Balapitiya.

U. A. Jayasundera, for defendant appellant.

K. C. de Silva, for petitioner respondent.

October 25, 1948. NAGALINGAM J.—

The first plaintiff is a minor. Acting by her next friend, the second plaintiff, she instituted this action claiming damages on the ground that the defendant had seduced her under promise of marriage. After trial, the learned judge entered judgment for the first plaintiff in a sum of Rs. 750.

On appeal, it has been contended that there is no evidence which would show that the evidence of the first plaintiff has been corroborated in any material particular, which is made a requirement under our law before an action of this nature can succeed. The learned judge has relied upon one circumstance as showing corroboration of the first

[1] *8th ed. 1919.* [2] *A. I. R. 1925 Patna 576.*

plaintiff's testimony, and that is this. He says whether the first plaintiff went to the house of the defendant of her own accord or at the request of her parents or at the request of the defendant was immaterial, but the fact that she did go to the house was in itself corroboration of her testimony, because, unless the defendant had something to do with the first plaintiff, she would not have gone to his house. That is a piece of reasoning with which I find it difficult to agree.

Corroboration must arise from some conduct or from some circumstance other than that of the bare conduct of the first plaintiff herself which in this case is certainly at a date very much later than the alleged act of seduction. The fact that the first plaintiff entered the house of the defendant after a period of fourteen months cannot be regarded as showing that the defendant, by his conduct or by any other method, conducted himself in such a manner as to make any one believe that he had something to do with the first plaintiff herself. The most that can be said is, as the learned trial judge himself remarked, probably the defendant had something to do with the first plaintiff, but what it is that he did or to what extent he had anything to do with the first plaintiff, are matters on which there is no evidence available in this case, or on which it can be said that corroboration has been furnished.

In *Grange v. Perera* [1] two possible methods of corroboration were indicated. The conduct of a defendant was there stressed in the second method that was said to be available to a plaintiff who sought to establish a case against a defendant. In this case, as I have remarked, there is no evidence at all of any conduct on the part of the defendant from which it could be said that corroboration of the plaintiff's testimony is proved.

Counsel for the plaintiff contended that there was other conduct on the part of the defendant, upon which, however, the learned judge himself has not relied to sustain his judgment. Counsel contended that the defendant, when he received information of the visit of the first plaintiff to his house, did not make a complaint to the headman, but the evidence is that he did in fact go and make a complaint to the police, and that the police had to come and take the first plaintiff away. So that even that conduct that counsel sought to rely upon does not exist.

In the circumstances, in view of the fact that there is no corroboration of the first plaintiff's testimony, the judgment of the learned judge cannot be allowed to stand. The appeal, is, therefore, allowed and the plaintiff's action is dismissed but there will be no order as to costs.

November 9, 1948. BASNAYAKE J.—

I agree that this appeal should be allowed.

In a contested action for damages on the ground of seduction the rule is that, when the oath of the plaintiff is contradicted by that of the defendant, and there is no evidence *aliunde*, there must be judgment for the defendant [2].

In this case the plaintiff's evidence is contradicted by the defendant. The plaintiff cannot therefore succeed as there is no evidence *aliunde*

[1] *1929 31 N. L. R. 85.*
[2] *Grotius, 3.35.8—Lee's Translation, Vol. I, p. 479.*

to support her. By evidence *aliunde* is meant evidence circumstantial or otherwise apart from the plaintiff's evidence which is relevant and leads one to believe the plaintiff and reject the defendant's evidence [1]. Even a false statement by the defendant may in certain circumstances afford the necessary corroboration. [2]

Appeal allowed.

1950 *Present :* **Windham J.**

ABDUL FAREED, Petitioner, *and* TRIBUNAL OF APPEAL, MOTOR TRANSPORT *et al.*, Respondents

S. C. 513—Application for a writ of Certiorari on the Tribunal of Appeal constituted under the Motor Car Ordinance, No. 45 of 1938.

Omnibus Service Licensing Ordinance, No. 47 of 1942—Appeal against refusal of licence—Tribunal of Appeal—Cannot remit case to Commissioner for re-hearing—No such inherent power in a statutory semi-judicial body—Sections 13 (3), 14 (2) and (3).

When an applicant for a licence appeals under section 13 (3) of the Omnibus Service Licensing Ordinance, No. 47 of 1942, the Tribunal of Appeal has no power to remit the matter for decision by the Commissioner, or even for the re-consideration of any particular points by the Commissioner. Under sub-sections (2) and (3) of section 14, the Tribunal of Appeal can do one of two things only, namely, either to confirm the Commissioner's refusal of a licence or to order that the licence be issued.

APPLICATION for a writ of *certiorari* on the Tribunal of Appeal constituted under the Motor Car Ordinance, No. 45 of 1938.

H. W. Tambiah, with *S. Sharvananda*, for petitioner.

M. Tiruchelvam, Crown Counsel, as *Amicus Curiae*.

Cur. adv. vult.

February 7, 1950. WINDHAM J.—

The petitioner is an applicant for the grant of a road service licence for a regular car service between Kandy and Udurawana. The application was made to the Commissioner of Motor Transport under section 3 of the Omnibus Service Licensing Ordinance, No. 47 of 1942. The Commissioner refused the application on the sole ground that the route from Kandy to Udurawana was unsuitable for a cab service. Against this decision the petitioner appealed under section 13 (3) of the Ordinance to the Tribunal of Appeal, namely the first respondent, the other three respondents being the members of the Tribunal. The Tribunal, after hearing the petitioner, postponed further hearing in order to enable it to ascertain

[1] *Potas v. Potas, 1911 C. P. D. 728.*
[2] *Poggenpoel v. Morris, 1938 C. P. D. 90.*