1953 *Present :* **Swan J.**

H. NANDUWA, Appellant, *and* R. NANDAWATHIE, Respondent

S. C. 76—M. C. Panwila, 7,121

Maintenance Ordinance, s. 6—Application on behalf of illegitimate child—Evidence—Silence may amount to admission—Corroboration.

In an application for the maintenance of an illegitimate child, evidence of the failure of the putative father to refute allegations made against him by a headman on an occasion which demanded a denial or a protest may amount to corroboration.

APPEAL from a judgment of the Magistrate's Court, Panwila.

K. C. de Silva, with *Ananda de Silva*, for the defendant appellant.

K. Sivasubramaniam, with *D. S. Nethsinha*, for the applicant respondent.

Cur. adv. vult.

March 17, 1953. SWAN J.—

This appeal raises an interesting point, to wit, whether silence can amount to an admission.

The appellant was sued by the respondent for maintenance for an illegitimate child whose paternity he denied. The learned Magistrate accepted the respondent's evidence and held that there was sufficient corroboration. The corroboration relied upon by the learned Magistrate was based on the following facts. The respondent had made a complaint to the headman that she was pregnant and that the appellant was responsible for her condition. As that complaint was made after sexual intimacy had ceased the learned Magistrate, following the judgment of this Court in *Ponnammah v. Seenithamby* [1], held that it did not furnish the corroboration required by Section 6 of the Maintenance Ordinance. But the headman also said that he met the appellant two days later and questioned him. I think I should give in detail the headman's evidence regarding this interview :—

> " I met the respondent and questioned him. I told him that the appellant had complained about him. I asked him to continue to maintain her if he had done so earlier. I believed her story and told him that ordinarily a woman would not make such a complaint unless it was true. The respondent did not protest that it was false."

The learned Magistrate took the view that this amounted to an admission on the appellant's part that he was the father of the child in the respondent's womb. Learned Counsel for the appellant contends that that inference is not reasonable or justifiable in law. Undoubtedly silence does not amount to an admission in every case. But there are occasions when the failure to deny an accusation or to repudiate a charge can be construed to mean a tacit admission of guilt. In the case of *Weideman v. Walpole* [2] Bowen L.J. said, " silence is not evidence of an admission unless there are circumstances which render it more reasonably probable that a man would answer the charge made against him than that he would not ".

There undoubtedly is authority for the proposition that failure to reply in circumstances in which a man might reasonably be expected to reply to a charge may be evidence against him. And if it is evidence against him, it can also be relied upon as corroboration where corroboration is required by law.

[1] *(1921) 22 N. L. R. 395.*

[2] *L. R. (1891) 2 Q.B. 534.*

In *Rex v. Marks Feigenbaum* [1] where the only corroboration of the evidence of the witnesses for the prosecution, who were undoubtedly accomplices, was the fact that the prisoner when confronted with having set them up to steal did not deny the charge, the Court of Criminal Appeal upheld the conviction. In the course of his judgment Darling J. said,

> " It amounted to this, that the prisoner was charged with inciting the boys to steal ; he was told specifically with what he was charged, and he was told the names of the boys whose detailed statement was read to him ; and in these circumstances he said not one single word. It appears to us that the Deputy-Chairman would have misdirected the jury if he had told them there was no corroboration of the boys' evidence."

There is also a local case exactly in point—*Meenatchipillai v. Sanmukam* [2]. Learned Counsel for the appellant submits that in that case there were other matters that provided the requisite corroboration. Undoubtedly there were, but de Sampayo J. took the view that the defendant's failure to deny the charge or to make any kind of protest was of itself sufficient corroboration.

In the present case, if the headman had merely informed the appellant of the woman's complaint and the appellant had said nothing, no inference of a tacit admission could be drawn. But the headman went further. He told the appellant that he believed the woman's story adding that ordinarily a woman would not make such a complaint unless it was true. Surely this was an occasion which demanded a denial or a protest. I am, therefore, unable to say that the learned Magistrate's inference that the appellant's conduct was corroboration of the truth of the applicant's story is not justifiable in law.

The appeal is dismissed with costs.

Appeal dismissed.