charitable corporations), the Massachusetts Supreme Court reached the conclusion that the legislature could not have intended to abolish by implication the common law defense of a charitable corporation, applying the canon of statutory construction that statutes in derogation of the common law are to be strictly construed. *Zoulalian v. New England Sanitorium & Benevolent Ass'n* (1918) 230 Mass. 102, 119 N. E. 686. A similar result was reached in New York, but here the decision was based on the fact that the employments covered were limited to employments "in a trade, business, or occupation carried on by the employer for pecuniary gain". *Dillon v. St. Patrick Cathedral* (1922) 234 N. Y. 225, 137 N. E. 311. The sequel of this case is interesting. In the same year it was held that where the charitable corporation carried insurance, the insurer could not invoke the immunity of the charity. *Bernstein v. Beth Israel Hospital* (1923) 236 N. Y. 268, 140 N. E. 694. In 1929 the Statute was amended so as to extend it to any person, firm, or corporation employing four or more persons. N. Y. Laws (1929) ch. 304; C. S. N. Y. (Cahill 1930) ch. 66 sec. 3 (18). This extension is logical in New York where the charitable corporation would be liable at common law to a servant.

The words of the Missouri Statute interpreted literally are broad enough to include charitable corporations, for employer is defined to include every "corporation". However, the second subdivision of the same section shows that this term is not to be taken literally, for "municipal corporations" are only included if the body elects to accept the chapter by law or ordinance. R. S. Mo. (1929) sec. 3304. The Statute expressly provides that it shall be conclusively presumed to apply to all employers who do not elect to reject it, by filing a notice with the commission (which must also be posted at the plant). R. S. Mo. (1929) sec. 3300. The whole theory of this election seems to be that it is an election between liability under the Statute or liability at common law. It would hardly seem that such an elective liability could be meant to destroy an absolute defense, which would have prevented there being any liability at all. Rules which are based on public policy should not be changed by such shadowy implications. Of course, charitable corporations can avoid all future trouble by promptly filing the notice of election with the commission. G. W. S., '33.

CONSTITUTIONAL LAW—DUE PROCESS OF LAW—RIGHT TO COUNSEL.—The defendant negroes were convicted in Alabama of the crime of rape upon two white girls. They were not given an opportunity before trial to communicate with relatives and friend to attempt to secure counsel. At the time they were arraigned, the trial judge stated he appointed all the members of the local bar as their counsel, but did not designate any particular attorney to aid the defendants until the case was actually called for trial. The result was that the counsel finally assigned was unprepared to defend the case and the defendants were deprived of the effective assistance of counsel. From a decision of the Alabama Supreme Court affirming the conviction, certiorari

was taken to the Supreme Court of the United States. *Held:* The fact that the Sixth Amendment guarantees the assistance of counsel to all persons tried for crimes against the United States does not prevent the inclusion of that right among those essential to the existence of due process of law. Because of the fundamental nature of the right, failure to provide counsel for the accused who, illiterate and indigent, were unable to procure assistance for themselves, amounted to a denial of due process of law.

The Fourteenth Amendment provides that no state shall "deprive any person of life, liberty, or property without due process of law." The clause has as many definitions as definers. As regards procedure, it has been said that one enjoys due process of law when he is possessed of the rights and privileges recognized by the common law before the American Revolution, although due process does not require that he have all of them. *Hurtado v. State of California* (1884) 110 U. S. 516. It is generally acknowledged that the guarantee does not operate as an assurance that a certain prescribed procedure will be followed. *Missouri ex rel. Hurwitz v. North* (1926) 271 U. S. 41. It does, however, include a reasonable opportunity to be heard. *Cooke v. United States* (1924) 267 U. S. 517; 3 Willoughby, Constitutional Law (2nd ed. 1929) sec. 1122.

The principal case presents the question whether the right to be heard, as an element of due process of law, includes the right to have the effective assistance of counsel. At common law there was no such right; in felony and treason cases the accused was absolutely denied the assistance of counsel. 1 Cooley, Constitutional Limitations (8th ed., 1927) 696 et seq. American state constitutions contain provisions specifically guaranteeing the right to counsel. 8 R. C. L. 83. Some state decisions preserve the right to the accused because of these constitutional provisions alone. *Delk v. State* (1896) 99 Ga. 667, 26 S. E. 752; *Williams v. Commonwealth* (1908) 33 Ky. L. 330, 110 S. W. 339; *State v. Yoes* (1910) 67 W. Va. 546, 68 S. E. 181. Others, although deciding on the basis of constitutional provisions, view the right as a fundamental one "going to the very essence of the fairness of the court hearings". *Decker v. State* (1925) 113 Oh. St. 512, 150 N. E. 74; *Carpenter v. County of Dane* (1859) 9 Wis. 274.

From the fact that the Sixth Amendment specifically guarantees the right to counsel it would seem, if the ordinary rules of construction were adopted, that general clauses in the same document, i. e. the identically worded due process clauses of the Fifth and Fourteenth Amendments, do not include it. *Cf. Hurtado v. State of California, supra* (where such reasoning was used with reference to the necessity of indictments in felony cases). But it has been held on other points that a right is not excluded as necessary to due process of law merely because it is guaranteed by one of the first eight amendments. *Twining v. New Jersey* (1908) 211 U. S. 78. For instance, the guarantee against the taking of private property for public use without just compensation has been held to be included in the due process clause of the Fourteenth Amendment. *C. B. & Q. R. R. Co. v. Chicago* (1897) 166 U. S. 226. The same has been held in regard to the freedom of speech and the

press. *Stromberg v. State of California* (1931) 283 U. S. 359; *Near v. State of Minnesota ex rel. Olson* (1931) 283 U. S. 697.

If the reasoning of the *Hurtado* case is applied, the conclusion is that the principal case is erroneous. If, however, there are considered the American view of the fundamental nature of the right to counsel and the complexity of legal procedure in relation to the capacities of the accused persons in the instant case, the result is just. The opinion carefully limits the effect of the decision so as not to hold that every accused person must be represented by counsel. The decision only applies if the circumstances of a particular case are such that the denial of counsel amounts to a denial of a fair hearing and hence is a denial of due process of law. N. P., '34.

CONTRACTS—OFFER AND ACCEPTANCE—SILENCE OF OFFEREE.—The defendant bank wired a request to its attorney for a statement of his fee in the event of the compromise of a suit then pending in New York. The then existing agreement was based on a contingent fee. The plaintiff replied that his charge would be $12,500. The defendant never answered directly, but ordered the plaintiff to discontinue the suit in the New York courts. The bank refused to pay the $12,500 after a compromise had been effected through other channels. *Held:* The relations between the parties were such that silence on the part of the defendant was conduct which misled the plaintiff and amounted to an acceptance of the plaintiff's offer. *Laredo Nat. Bank v. Gordon* (C. C. A. 5, 1932) 61 F. (2d) 906.

It is an established rule of contract law that ordinarily the silence of an offeree is not acceptance. *Beach v. United States* (1912) 226 U. S. 243; *Carnahan Mfg. Co. v. Beebe-Bowles Co.* (1916) 80 Or. 124, 156 Pac. 584; Clark, Law of Contracts (4th ed., 1931) 26. There are, however, instances wherein silence and inaction may operate as acceptance. If the offeree exercises dominion over the chattel or thing offered, silence will be acceptance when there are no circumstances showing a contrary intention. This is illustrated by the receipt and reading of a newspaper for which the offeree did not subscribe and which he did not want. *Austin v. Bunge* (1911) 156 Mo. App. 286, 137 S. W. 618. If the offeree receives benefits from services which he could reasonably reject and the circumstances, as perceived by a reasonable man, demonstrate that compensation is expected, silence will operate as acceptance. For instance, there was held to be a contract to pay the reasonable value of the services performed when the defendant stood by and allowed the plaintiff to rebuild a party wall when he knew the plaintiff expected compensation. *Day v. Caton* (1876) 119 Mass. 513. If, because of previous dealings or other circumstances, the offeree has led the offeror to believe silence shows acceptance, it will be considered such. Thus, failure to return a shipment of hides was held to be an acceptance when in previous dealings there had often been no positive act of acceptance and yet both parties had considered that contracts were formed. *Hobbs v. Massasoit Whip Co.* (1893) 158 Mass. 194, 33 N. E. 495. The view was extended when it was held that