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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

failure to reject an order for a meal within a reasonable time was acceptance. *Cole-McIntyre-Norfleet Co. v. Halloway* (1919) 141 Tenn. 679, 214 S. W. 817; cf. 1 Restatement of the Law of Contracts (1932) sec. 72.

The courts have apparently gone no further, although one authority has suggested that silence alone should be acceptance in the cases of an offer of forbearance and of a bilateral contract when a reasonable man would deem silence to show an intention to assent. 1 Williston, Law of Contracts (1931) secs. 91, 91a. It is submitted that silence alone is an exceedingly impractical basis for a conclusion in regard to the existence of any affirmative mental attitude in the offeree.

From the decisions it is possible to deduce a single guiding principle. Silence is acceptance only when there are other circumstances, exclusive of the silence, which tend to show that assent is the intention of the offeree. A positive act is something from which intention can be determined objectively. Silence alone is, at the most, merely ambiguous as far as showing the mental condition of an individual is concerned.

In the principal case the act of the defendant in requesting the plaintiff to discontinue the suit pending in New York is a circumstance in addition to silence. Both taken together signify acceptance, although neither would be sufficient by itself. The plaintiff had already stated his charge at the request of his client, who by his act of terminating suit whose prosecution was essential to the fulfilment of the previous agreement signified his acceptance of the only other arrangement before the parties. N. P., '34.

DEED OF TRUST—EFFECT OF PROVISION GIVING TRUSTEE EXCLUSIVE POWER TO RENEW INSURANCE POLICIES.—A deed of trust provided for the assignment to the trustee of all insurance policies on the property covered. It further provided that the trustee was to have the exclusive right to renew or change the insurance carried on the property, subject to a duty to keep a certain stated amount of each kind of insurance in force. There was a further provision that the trustee might acquire for his own benefit, if he so desired, any of the serial notes to be issued under the deed of trust. The debtor notified the trustee not to take out new insurance and when the old policies expired tendered assignment of new policies in solvent companies. Nevertheless, the trustee took out new insurance. The trustee was a real estate broker and received commissions from the insurance companies on all policies written by him. The trustee was attempting to sell the land as was allowed by the deed of trust because the debtor refused to pay the premiums on the insurance policies taken out by the trustee. *Held*, the clause is valid and gives the trustee an irrevocable power to take out insurance and force the debtor to pay for it. *Hadley Bros.-Uhl Co. v. Scott* (Mo. App. 1932) 53 S. W. (2d) 1071.

Although such clauses have become common in recent deeds of trust, this is the first case which passes on the validity of such a provision. In an early Illinois case a similar provision was involved, but there the validity of