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Effect of Public Policy Upon Reward Offers

idea of enchancement to confer liens on agisters, liverymen and garagemen for their services.[25] The statutes also reflected a trend toward giving a possessory lien to an artisan for any work performed on the chattel of another at the express or implied direction of the owner. For example, the New York Lien Law[26] bestows an artisan's lien on "a person who makes, alters, repairs or in any way enhances the value of an article of personal property...." This statute does not limit the artisan to a lien only for an increase in market value but extends to any work performed at the request of the owner.

The early common law failed to consider the artisan whose work did not increase the market value of the chattel. The courts, as in *Chicago Great W.R.R. Co. v. American McKenna Process Co.*,[27] recognized that market value was an arbitrary standard that excluded an artisan merely because his work failed to enhance the value of the product. In addition, the statutes generally have been constructed to cover specifically those artisans who do any work on the chattel of another, thus putting to rest the market value limitation.

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EFFECT OF PUBLIC POLICY UPON REWARD OFFERS

An offeror of a unilateral contract may attach to the offer any terms or conditions he desires. However, if public policy forbids the formation of a binding contract, the offeror cannot impose a condition having the effect of precluding judicial review. Reward cases are an example of the type of situations where public policy considerations are important.

The recent case of *Maryland Cas. Co. v. Mathews*[1] involves ten claimants to a reward of $35,000. On June 20, 1960, the offices of the Department of Motor Vehicles of West Virginia were entered and $360,000 stolen. The Maryland Casualty Company offered a reward for information leading to the arrest and conviction of persons perpetrating the theft and for return of the money. Final determination of the persons entitled to the reward was left to a board of prominent citizens. On July 8, 1960, Earl Mathews was arrested for the

[25] 37 Mich. L. Rev. 273 (1938).
[26] N.Y. Lien Law § 180 (1951).
[27] 200 Ill. App. 166 (1916).
[1] 209 F. Supp. 822 (S.D.W. Va. 1962).

crime and pleaded guilty. After reviewing the claims to the reward, the board awarded: $5,000 to Mrs. Mathews, wife of the thief;[2] $10,000 to Mrs. McIntyre, mother of a prosecuting attorney of Kanawha County;[3] and the remainder of $19,540.58 to Mr. Davis, full-time salaried investigator of Kanawha County.

The unsuccessful claimants instituted actions against the Maryland Casualty Company who interpleaded all the claimants. Davis moved to dismiss on the ground that the court did not have jurisdiction. The court held that it did have jurisdiction, ruled that Davis was ineligible to receive any of the money and decided to hear the entire controversy anew.

Davis advanced two contentions in support of his claim to the reward. First he stated that the district court was without jurisdiction to hear this case. He based his claim on a term of the reward offer which stated that the determination of a citizens committee should be final. He also said his actions were outside the scope of the public policy doctrine forbidding public officers to accept rewards since his efforts were made during off-hours with the sole intent to recover the reward.

The court rejected Davis' first contention since he was unable to provide the necessary consideration to complete the contract. As in the case of all contracts, a consideration is necessary to support a contract based on the offer of a reward. The consideration supporting the promise of a reward is not the benefit to the promisor but the detriment to the promisee. Performance of the terms of the offer constitute sufficient consideration, but performance by one otherwise bound to do so does not operate as sufficient consideration.[4] Davis was not in a position to offer adequate consideration due to the nature of his employment. In 1899, the Supreme Court in *United States v. Matthews*[5] recognized as well established the common law doctrine based on public policy that an officer cannot receive a reward for the performance of a duty which he is required by law to perform. The court therefore had jurisdiction because the board's decision to grant Davis a reward was contrary to law.

Davis' second contention failed irrespective of his intent or the fact that he rendered such services on his own time since the services

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[2]Memorandum on behalf of Grover T. Davis, Jr., in support of the allegations that the claimants, Hildgarde Mathews and Mary Kathleen McIntyre are ineligible to share in the proceeds of the reward, p. 1.

[3]Id. at 5.

[4]See 77 CJS Rewards § 13 (1952).

[5]173 U.S. 301 (1899).

rendered by him were performed within his own territorial jurisdiction, and, therefore, within the scope of his official duty. The rationale underlying such a rule emanates from public policy. The classic case demonstrating this principle is *Somerset Bank v. Edmunds.*[6] Here plaintiff brought suit for a reward for procuring the arrest of a bank robber. The bank gave public notice of the reward. The plaintiff had the necessary intention based on the offer, but the bank answered that the plaintiff was precluded from recovery as he was the town constable, bound to apprehend the criminal. The court held for the defendant stating that such was his duty and responsibility and that it would violate public policy to allow a reward or compensation in addition to his salary. A constable making an arrest within his own jurisdiction is presumed to act within the scope of his employment.

In re Russell,[7] another leading case, involved a private citizen whose home was burglarized. A reward was offered for information leading to the apprehension of the guilty party. Several policemen on *their own free time* obtained the information but were denied recovery because this was held to be within the scope of their official duties. The public policy behind the holding was stated to be:

> "[A] policeman might, without breach of official duty, withhold from his superior officers the information so obtained because it was obtained while he was 'off duty,' and might thus shield criminals of the worst description from prosecution and punishment .... A policeman who, whether on duty or off duty, obtains, within the territorial jurisdiction of the police department, information which will lead to the conviction of the perpetrators of crime therein, is bound, without other compensation or reward than that given by the law, to communicate it. ... To withhold such information would be a flagrant breach of duty ...."[8]

Over a period of years, there has been no deviation from the *Russell* doctrine.[9] Davis' own testimony[10] shows the wisdom of this doc-

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[6]76 Ohio St. 396, 81 N.E. 641 (1907). See Annot., 11 L.R.A. (N. S.) 1170 (1907).
[7]51 Conn. 577 (1884).
[8]Id. at 594, 595.
[9]Oklahoma Ry. Co. v. Morris, 48 Okla. 8, 148 Pac. 1032 (1914), held that it makes no difference that the claimant was not on duty since he was within his jurisdiction. It further denied plaintiff's contention that to allow recovery would spur officials to greater efficiency and effort. In Gray v. Martino, 91 N.J.L. 462, 103 Atl. 24 (1918), the plaintiff was a police officer in Atlantic City, N.J., and knew of information concerning a robbery. He then learned of a reward but on the ground of public policy was denied recovery.

There are other compelling reasons why this public policy doctrine is a sound one. An investigator, through modern police methods and communication, would

trine. He admitted that he kept all his ideas and results to himself and only divulged them to claim the reward. His employer, the prosecuting attorney, said if Davis had received such information, he would have been expected to disclose it to the investigating team.[11]

Some jurisdictions have recognized exceptions to this strict public policy rule precluding a peace officer's recovery of a reward.[12] First, if a constable arrests a fugitive from another state, he is not precluded from recovering a reward offered in the other state.[13] A peace officer owes a duty only to his own jurisdiction.[14] When he performs the required service in another jurisdiction,[15] or enters another jurisdiction in pursuit of a criminal who committed a crime in his own bailiwick, some courts will hold that he is entitled to a reward.[16] A nonpaid officer or special policeman may also be eligible to accept a reward.[17] The legislature by special act may either permit a public officer to receive a reward,[18] or relieve him of certain duties within his

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have at his disposal better access to useful information than a member of the general public. Also an informant might divulge information to a policeman when he would be unwilling to do so for a person engaged in a private pursuit. The Virginia case of Buek v. Nance, 112 Va. 28. 70 S.E. 515 (1911), demonstrates how a policeman's position could be of advantage to him in gaining information. The plaintiff was a jailer and had in his custody one charged with a jewel theft. He obtained a confession but was denied recovery of a reward as his only right of access to the culprit was through his public office.

[10]209 F. Supp. at 827-28.

[11]Id. at 825.

[12]Under various fact situations, some cases have circumvented the technical definition of the term "duty" to allow a public official to recover a reward in spite of the recognized policy doctrine. 22 Wash. U.L.Q. 130 (1936).

[13]Where a murder occurred in Kansas, and the Oklahoma authorities captured the murder in their jurisdiction, they were held to be under no obligation to do this, and therefore entitled to a reward. Board of Comm'rs of Montgomery County v. Johnson, 126 Kan. 36, 266 P. 749 (1928); Collier v. Green, 205 Ky. 361, 265 S.W. 812 (1924).

[14]Marsh v. Wells, Fargo & Co. Express, 88 Kan. 538, 129 Pac. 168. See Annot. 43 L.R.A. (N.S.) 133 (1913).

[15]A Kentucky bankers association offered a reward for the apprehension of anyone guilty of robbing any of its member banks. Cassady, a local sheriff, pursued a person guilty of such crime into another state and effected his arrest. He was held eligible to receive a reward. Kentucky Bankers Ass'n v. Cassady, 264 Ky. 351, 94 S.W.2d 622 (1936). Miners Wholesale Grocery v. Jennings, 98 Okla. 32, 224 Pac. 192 (1924).

[16]Kentucky Bankers Ass'n v. Cassady, 264 Ky. 351, 94 S.W.2d 622 (1936); Chambers v. Ogle, 117 Ark. 242, 174 S.W. 532 (1915).

[17]Board of Comm'rs of Montgomery County v. Johnson, 126 Kan. 36, 266 Pac. 749 (1928); Smith v. Fenner, 102 Kan. 830, 172 Pac. 514 (1918); Elkins v. Board of Comm'rs of Wyandotte County, 91 Kan. 518, 138 Pac. 578 (1914). Hartley v. Inhabitants of Granville, 216 Mass. 38, 102 N.E. 942 (1913).

[18]Miss. Code Ann. §§ 8079, 8082 (1957), allow state highway patrolmen to participate in statutory rewards, as they are said not to come under the definition of a

own jurisdiction so as to make him eligible.[19] The officer who performs the duty before coming into or after leaving office may take the reward.[20] The noted exceptions have been applied only when the officer is acting outside his jurisdiction or in certain instances when he is under no duty to perform the service. None of these elements were present in *Mathews.*

The principal case concerned only the eligibility of Davis to receive the reward. In redetermining the entire controversy, the court will consider the claims of the other parties. Serious doubt must be expressed as to the eligibility of Mrs. Mathews to participate in the reward for two reasons: first, her information was not yielded voluntarily, and secondly, public policy should prevent the spouse of the fugitive from benefiting from his crime.

Mrs. Mathews did not divulge her information concerning the location of her husband until she was under police interrogation, and this information was not given until one day before the arrest of her husband. This was two weeks after the offer of the reward was first made when she realized that her husband's capture was imminent.[21] Her disclosure then, can hardly be considered voluntary,[22] so there is no acceptance of the offer.

A recent District of Columbia decision is illustrative of this principle denying a reward to a claimant who had not voluntarily accepted the reward offer. In *Glover v. Jewish War Veterans,*[23] a member of defendant's organization was murdered when his pharmacy was burglarized, and the defendant offered a reward for information leading to the apprehension and conviction of the guilty party.

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peace officer. Smith v. Rankin County, 208 Miss. 792, 45 So. 2d 592 (1950). See also, United States v. Matthews, 173 U.S. 381 (1899).

[19]In Kinn v. First National Bank of Mineral Point, 118 Wis. 537, 95 N.W. 969 (1903), the powers and duties of the chief of police of Mineral Point were prescribed by statute. It was not made his duty to arrest without process one wanted for burglary, and hence, a chief who made such an arrest, within the limits of his jurisdiction, is not precluded by his office from recovering a reward.

[20]Kentucky Bankers Ass'n v. Cassady, supra note 16.

[21]Memorandum on behalf of Grover T. Davis, Jr., pp. 1-2.

[22]Sheldon v. George, 132 App. Div. 470, 116 N.Y.S. 969, 971 (1909), involved the theft of diamond earrings. The plaintiff bought the goods not knowing they were stolen and only when threatened with legal process for their recovery, did he agree to return them to the rightful owner. He then sought recovery of the reward previously offered for their return. The court held "If the plaintiff returned diamonds under compulsion,... then no contract exists, and no liability of defendant to pay him the reward is created by the simple fact that defendant received the diamonds from plaintiff." See cases collected in 77 C.J.S. Rewards, § 22 (1952).

[23]68 A.2d 233 (D.C. Munic. Ct. of Appeals 1949).

The plaintiff's daughter and the felon were romantically involved. The police questioned the mother at her home. While under interrogation, she admitted where the couple might be found, and they were subsequently apprehended at this site. The mother was denied the reward for two reasons: she did not know of the offer at the time she divulged the information, and she did not give the information voluntarily.[24]

Secondly, Mrs. Mathews should be denied recovery on grounds of public policy, since she was the spouse of the fugitive. This policy rationale is based upon the premise that since the fugitive cannot collect a reward for turning himself in,[25] neither should his spouse or a person closely connected with the fugitive benefit by complying with the offer for reward.

> "It is a maxim of the law that no man shall be permitted to profit by, or take advantage of his own wrong, or to found any claim upon his own iniquity. [Citation omitted.] Under this maxim, it has been uniformly held that a person who is connected with an alleged theft, . . . cannot recover a reward . . . ."[26]

To allow a wife to recover for her husband's crime would open the door to deceit and collusion. She might easily decide that her husband is about to be apprehended, and therefore, divulge information to salvage some monetary gain. This may be done in concert with the husband who thinks arrest is imminent.

The court must on redetermination also consider the reward granted to Mrs. McIntyre, whose son was a prosecuting attorney of the county wherein the fugitive was apprehended. Serious doubt must also be cast upon her eligibility to share in the reward. Although there does not appear to be any authority precluding relatives of public officers from sharing rewards,[27] it would seem to follow that the rationale of *Russell* applies to relatives of public officials as well. Again the door to deceit would open wide if all a policeman or

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[24]A police organization of the District of Columbia had also offered a reward for information concerning the same crime. Again plaintiff was denied recovery for the same reasons as elaborated in the Jewish War Veterans case. Glover v. District of Columbia, 77 A.2d 788 (D.C. Munic. Ct. of Appeals 1951).

[25]"Where a reward is offered for the apprehension or conviction of a criminal, the criminal himself is not one of the public to whom the offer is addressed, and he cannot by surrendering himself become entitled to the reward." 1 Williston, Contracts § 74A (3d ed. 1957). Board of Comm'rs of Clinton County v. Davis, 162 Ind. 60, 69 N.E. 680, (1904). See Annot. 64 L.R.A. 780 (1904).

[26]Id., 69 N.E. at 683.

[27]Mrs. McIntyre's son was a prosecuting attorney of Kanawha County, and due to the nature of his public position, fell under the public policy doctrine forbidding public officials to accept a reward.

prosecutor had to do was to divulge information, obtained in his official capacity, to his family who could in turn qualify for the reward.

This would lead to the conclusion that there are no eligible claimants to the reward. Although the board found that the three recipients had materially contributed to the capture of the fugitive and had thereby complied with the terms of the offer, the designated recipients should be precluded on grounds of public policy. When the board named three people to share in the reward, they impliedly found that the other claimants had not performed the necessary service to warrant sharing in the reward. It would impair the offer of a unilateral contract for the court now to declare otherwise. The court may prevent the named persons from sharing in the reward on the grounds of public policy, but the court should not find other persons' services sufficient to constitute acceptance of the offer, as the fact finding agency designated by the offeror declared to the contrary. Therefore, there appear to be no eligible claimants for the reward, which is perhaps as it should be where the solution of crimes is involved.

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