1906

Are a Knowledge of an Offer and Intent to Accept Essential to the Recovery of a Reward Offered?

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Recommended Citation
Willis, Hugh Evander, "Are a Knowledge of an Offer and Intent to Accept Essential to the Recovery of a Reward Offered?" (1906). Articles by Maurer Faculty. 2806. https://www.repository.law.indiana.edu/facpub/2806

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Whether or not a knowledge of an offer and an intent to accept the same are essential to the recovery of a reward, are two, not especially novel, but rather important questions involved in this segment of the law. They are made important by reason of the fact that there are upon each of the questions two distinct lines of decisions and uniform textbook and cyclopedic assertions that there is such conflict, it being said that each side of the proposition is "upheld by a strong line of authority." It is always desirable, if possible, to have a uniform rule upon any question of law, and therefore this article is written with the hope that, in spite of holdings and assertions, it will not be considered presumptuous to attempt to show that there is no substantial basis for the assertions, or for one line of holdings. In order to have a liability resting upon a person it is necessary first to have a duty resting upon him. Liability is grounded in obligation, and this must rest upon the party to be held liable before another can have a right against him. What, then, is the nature of the obligation to pay a reward? If it is contractual we must insist upon contractual principles controlling. If it has some other nature and source, other principles must govern. Civil obligations have their origin either in antecedent rights and duties in rem or in antecedent rights and duties in personam, the latter being contractual or quasi contractual. What is the origin of the duty to pay a reward and the corresponding right to obtain the pay? No one would contend that there is a right, the infringement of which would give rise to a tort. There is no antecedent right in rem of this nature known to the common law. There would seem to be as little reason for the assumption that there is a quasi contractual obligation, although this is an assumption which cannot be dismissed with a word. While in both tort and quasi contract the obligation is imposed by operation of law, yet in the two cases there are some very marked differences. A tort is a violation of an antecedent right in rem where the obligation is generally simply to forbear, while a quasi contractual obligation is in personam and generally requires the performance of some act. A quasi contractual obligation may be created by judgment, by statute, or by the doctrine that no one shall be allowed to enrich himself unjustly at the expense of another. The first two are eliminated at once from this discussion by reason of the fact that they have never created any such obligation as a duty to pay a reward; and it remains to determine whether or not such a duty may arise from the doctrine of unjust enrichment. This doctrine covers a variety of obligations, such as that to return money paid under mistake, or undue influence, or duress, or fraud, or of an infant or insane person to pay for necessities, or under certain circumstances of anyone to pay for benefits conferred without request. The last instance is the only one that need occasion any difficulty, for, continuing our process of elimination, we find that this is the only quasi contractual obligation that could possibly embrace the matter of obtaining rewards in the absence of the knowledge of an offer, or an intent to accept the same. Hence in the last analysis the question to be answered is, how extensive is this doctrine? Is there a general obligation, independent of contract, resting upon everyone to pay rewards to those who render benefits without request? If a person can recover a reward, which has been offered, but of which he has no knowledge, or which he does not at the time intend to accept, we are forced to the position that he can recover a reward when none in fact has been offered. The obligation to pay must rest by law upon the party for whom the service is supposed to be rendered, even though he has made no promise, for a promise not known or relied upon is the same as no promise at all. That there is any such obligation cannot be admitted for a moment. It is true that such a proposition has not been unannounced. In the case of Reeder v. Anderson, 1 an action was brought by a stranger to recover reasonable compensation for the voluntary apprehension and restitution of a runaway slave, and the question was whether the law would imply a promise by the owner to pay the same. The court answered this question in the affirmative, using the following anomalous language: "Though such friendly offices are frequently those only

1 4 Dan.5 183.
of good neighborship, which should not be influenced by mercenary motives or expectations, nevertheless, it seems to us that there is an implied request from the owner to all other persons to endeavor to secure to him lost property which he is anxious to retrieve; and that therefore there should be an implied undertaking to (at least) indemnify any person who shall, by the expenditure of time or money, contribute to the reclamation of the lost property. It is possible to understand why a legal obligation should be imposed, independent of contract, upon infants and insane to pay for necessaries, upon anyone to pay for his burial, or for the goods of another, to repair to, or expense of keeping, lost property which has come into a stranger's possession, providing the owner elects to recover the same. In all these cases if a liability was not imposed one of the parties would be unjustly enriched at the expense of the other. But the doctrine announced in the above case goes farther than this. It does not pretend to base the liability on contract, or if there is a pretense there is nothing more, for there is no contract express or implied in fact, but rather seems to hold that there is a legal obligation resting on men to reward their neighbors for every friendly office they may bestow. Where is this doctrine to end? If there is this obligation to reward another for the return to him of a runaway slave, is there also an obligation to reward one who finds and returns a horse that has been lost, or a dog, or a watch, or a jack-knife? And every time there is committed a murder, or a burglary, or larceny, or an arson, or a boy is kidnapped, or any other crime against city or state, is there an obligation to reward anyone who happens to discover the criminal or culprit? Would the doctrine end here? Would not everyone be required to reward a friend or enemy for voluntarily painting his house, or fencing his yard, or sending roses or ice cream to his sick-bed, or rendering any other act of kindness? Would there be any case of benefit conferred that could escape its blighting touch? Admit such a doctrine and the law of gifts and executory contracts would be obliterated and we should go back at once to status, and a status intolerable, whereas the tendency of the law has always been from status to contract. In matters of this kind it is better to leave the question of obligation for the decision of the individual parties and let it rest upon the certain foundation of contract. The case of Reeder v. Anderson, supra, must consequently be held to promulgate a dangerous doctrine, and one not sustained by the best reasoning, or well-considered decisions. Liability, if in a given case liability exists, must be founded upon some contract, except in the one or two cases where a legal obligation is imposed independent thereof, because of the palpable unjust enrichment which would otherwise result, or where the interests of the public demand it. 2

Placing the right to recover a reward upon contractual grounds, before a liability can arise all the elements of a valid contract must be found. One party cannot make a contract, as, if it were admitted to be a contract, would be true in the case of Reeder v. Anderson. 3 No one can by such officious intermeddling cast a liability on another. The law will not thus allow a man to make himself a creditor by his own unsolicited act. There must also be an assent, or an agreement understood and assented to by both of the parties. This means that there must be an offer on one side, which is absolutely and unconditionally accepted in all particulars on the other side, with the intent on the part of the parties to enter into legal relations and with terms that are definite and certain. There can be no acceptance of an offer of which the acceptor has never heard nor an acceptance which is not meant to be such by the person making it. If he does not know of the offer, the giving of information or doing any other act cannot constitute even an acceptance, much less both an offer and acceptance, and if he knows of the offer but does not intend to accept it his acts may amount to a gift but they do not supply the element of assent necessary to every valid contract, nor give rise to any obligation upon which suit may be brought. In the third place the agreement must be lifted up to where it will be recognized by the law courts and thus become legal, or enforceable, or obligatory, by having in addition to the other ele-


3 Supra.
ments a consideration or other prerequisites prescribed by law. In order that a contractual relation may exist between the claimant and the offerer of a reward, the offer, on the one hand, must not only be accepted, on the other hand, by the performance of the service in such a way as to constitute consent to the offer, but the services of the claimant must be rendered in consequence of the reward offered, in consideration thereof and with a view to earning the same. If anyone desires to place this liability upon the ground of a contract: implied in fact, I am not going to quarrel with him. There are some reasons why it might be desirable to say that the assent is implied from the conduct of the parties, when the offerer makes a promise which he expects will induce men to do some work for him, and in reliance upon his offer and with a view to obtaining the reward the claimant renders the services specified in the offer. But whether the contract be regarded as express or implied, it must be one or the other; liability can arise in no other way. Of course one is liable in quasi contract for benefits conferred upon request, as where for instance a contract is not enforceable, and while this would not include cases of rewards unknown or unacted upon, yet the doctrine might assimilate the case of an offer of reward known and acted upon with intent to accept were it not for the fact that the transaction is equivalent to an actual contract, because there is an aggregatio mentium on the part of the parties. But the proposition under discussion does not come under this hypothesis. So that, in conclusion, I should say that to entitle a person to a reward offered for the recovery, or for information leading to the recovery, of property lost, or for the apprehension of a felon, or for anything else, however the offer may be framed, that person must show a rendering of the services required (1) after a knowledge of, and (2) with a view of obtaining, the reward offered. This proposition is maintained and sustained by numerous and well-considered cases.  

In the case of Williams v. West


Chicago, 5 an action of assumpsit was brought to recover a reward of $5000 offered for the arrest and conviction of the murderer or murderers of one C. B. Birch, killed while in the service of the defendant street railway company. The claimant read this offer in the Chicago Tribune, but before reading it had already performed most of the services rendered by him and contemplated by the offer. Parties known as Mannow and Windrath were convicted of the crime, and the only services rendered by the defendant in connection with their arrest and conviction, after he knew of the offered reward, consisted in his identification of Windrath and his testimony on the trial that he had seen Mannow and Windrath together near the time of the commission of the crime. Holding that the claimant failed to make out a cause of action the court said: "The right to recover a reward arises out of the contractual relation which exists between the person offering the reward and the claimant, which is implied by law by reason of the offer on the one hand and the performance of the service on the other, the reason of the rule being that the services of the claimant are rendered in consequence of the offered reward, from which an implied promise is raised on the part of the person offering the reward to pay him the amount thereof by reason of the performance by him of such service, and no such promise can be implied unless he knew at the time of the performance of the service that the reward had been offered, and in consideration thereof, and with a view to earning the same, rendered the service specified in such offer."

In Fitch v. Snedaker, 6 the court held that testimony as to information given by the claimant before he heard of the reward should be excluded, and said: "The form of action in all such cases is assumpsit. The defendant is proceeded against as upon his contract to pay, and the first question is, was there a contract between the parties? To the existence of a contract there must be mutual assent, or, in another form, offer and consent to the offer. . . . Without that there is no contract. Now, then, can there be consent or assent to that of which the party has never heard? . . . The offer could only

5 Supra.
6 Supra.
operate upon plaintiffs after they heard of it."

In the case of Stamper v. Temple, where the lower court had charged the jury that the fact that the claimants were at the time ignorant that the reward had been offered would be no ground of defense against a suit brought for its recovery, the Supreme Court of Tennessee used the following language: "To make a good contract there must be an aggregatio mentium, an agreement on the one part to give, and on the other to receive. How could there be such an agreement if the plaintiffs in this case made the arrest in ignorance that a reward had been offered? The arrest would have been made not for the reward but in the discharge of the public duty."

In the case of Howland v. Lounds, where a reward of $150 was offered for the recovery, or information leading to the recovery of a stray mare, and there were a number of claimants for the reward the court decided that it belonged to the plaintiff, Howland, for the following reason: "In order to entitle a party to a reward offered, he must establish between himself and the person offering the reward not only the offer and his acceptance of it, but his performance of the services for which the reward was offered; and upon principle, as well as upon authority, the performance of this service by one who did not know of the offer, and could not have acted in reference to it, cannot recover."

But there are some decisions, not in line with these holdings, which permit a recovery in such cases, in the absence of a knowledge of the offer, or an intent to accept it, although upon what ground, it would take more than an Oedipus Tyranus to guess.

In the early English case of Williams v. Carwardine, a reward had been offered by the defendant for information which was supplied by the plaintiff, but not with a view to the reward. The report of the case does not show that the plaintiff was unaware of the offer, the only point which seems to have been raised being that the reward was not the motive which induced the plaintiff to supply the information. The court held that the motive was immaterial, and that "there was a contract with the person who performed the condition mentioned in the advertisement." We have already explained why we think that giving information under such circumstances cannot amount to a valid acceptance, for the element of assent is lacking, and what is the magic power of the word "condition?" A condition is neither a contract, nor a creator of one. In order to have any validity it must be a term in a contract, but before that can occur there must be a valid contract, and if for the lack of the element of assent, or consideration, or proper parties, or subject-matter, the attempted contract falls to the ground the condition, incidental and annexed thereto, falls with it. It is absurd to talk about a condition standing alone without a contract. Suppose it were possible to conceive of a condition precedent not in a contract to be fulfilled how is any obligation to arise?

One of the first cases on this proposition to be decided in this country was that of Eagle v. Smith, where there was an offer of reward for the recovery of a horse, wagon, etc., stolen, which were returned before the reward was published. The plaintiff sued in assumpsit for the reward, and the question which the court decided was, not whether there was a contract or not, but whether the precedent condition had been fulfilled, and finding it had been decided for the plaintiff, but based its decision wholly on the case of Williams v. Carwardine, which has already been sufficiently discussed.

Another case, which it is claimed follows these, is Board of County Commissioners v. Wood, which was a suit for bounty money, and the issue in the case was whether furnishing proof was a condition precedent to bringing action, and the court held it was not, but by way of dicta used the following expressions: "It might be presumed that in entering service and being accredited to the county he acted with a view to the bounty offered."

"But we doubt whether the presumption is necessary," citing 1 Story Con., sec. 380a, where the conditional promise doctrine is stated, and two cases not in point, for in neither of the cases were these points raised or referred to, the issue in one being the right

7 Supra.
8 Supra.
9 4 Barn. & Adol. 621.
10 4 Houst. 268.
11 Supra.
12 39 Ind. 345.
to lien and in the other whether the offer contemplated the future as well as the past, and for all that appears in both the parties may have had knowledge of the offers and intended to accept them.

Another case relied upon to support the doctrine of Williams v. Carwardine,14 is Russell v. Stewart,15 where the question was whether a man could recover a reward offered for the arrest and conviction of a murderer, though the one claiming the reward did not know of the offer at the time of the arrest, and the court answered the question in the affirmative, without once alluding to the question whether knowledge of the offer is essential, but rather confining its discussion to whether the claimant was the agent of a man whose duty it was to make the arrest without compensation by reward because of his being especially hired for that purpose, or was acting independently, and finding he acted independently allowed a recovery.

The last case usually cited in support of this contention is that of Auditor v. Ballard,16 where the action was to recover a reward for the apprehension of a fugitive from justice, though the claimant did not know of the offer, and the court held that he could, saying that it is like the "case of labor done and performed on request." And "Why should the state inquire whether he knew or not?" The benefit is the same in either case. This decision was based on Dawkins v. Sappington,17 which cited alone, Williams v. Carwardine.18 Such a holding is to be expected from the court which decided Reeder v. Anderson, discussed above. The Kentucky holdings on the subject are certainly extreme, and I can see no way of explaining or reconciling them. They seem to me to be utterly without authority, offensive to the fundamental legal principles of the common law and the cause of utmost confusion so far as they have any influence. How is there any similarity between a case where there may be an offer, but it has never been heard of or relied on, and a case of "labor done and performed on request," where the essence of the transaction and recovery is the knowledge and the reliance?

Rules of diction ought to settle this question; it does not need to be submitted to a judicial tribunal.

From the character of the arguments in the foregoing cases and the nature of the authorities they quote it is easily seen how flimsy is the whole texture of the decisions giving a claimant the right to recover a reward, of which, at the time of performing his services, he has never heard or which he does not intend to accept. They give no clear and cogent reasons for permitting a recovery, but rather the allowance of the same is subservive of all clearness and cogency. The only defensible position is that announced in Williams v. West Chicago, etc.,19 and the other cases holding a knowledge of the offer and intent to accept essentials to the recovery of a reward; and it seems to me that the only justifiable course is to maintain that these cases announce the true doctrine, that there are not two strong lines of authority, but that the cases announcing the other doctrine are contra and out of harmony with the true and leading holdings.

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CRIMINAL LAW—PROPER INSTRUCTIONS AS TO CONVICTION ON CIRCUMSTANTIAL EVIDENCE.

STATE v. BLYDENBURGH.

Supreme Court of Iowa, October 26, 1905.

On a prosecution for murder, the evidence relied on by the state was circumstantial, and in the first paragraph of the charge the court instructed that the burden was upon the state to establish the crime beyond a reasonable doubt, and stated that the presumption of innocence continued until the evidence satisfied the jury of guilt beyond a reasonable doubt, which was defined. Thereafter the jury was told that, in order to warrant a conviction on circumstantial evidence, the facts proved must not only be consistent with guilt, but inconsistent with any rational theory of innocence, and in another paragraph the court called the attention of the jury to the specific matters of fact essential to the ultimate fact of guilt, and the jury were told that each separate fact must be proven beyond a reasonable doubt. Held that defendant could not complain of the refusal of an instruction that, in order to warrant a conviction on circumstantial evidence, each fact in the chain of circumstances must be established by competent evidence beyond a reasonable doubt.

14 Supra.
15 44 Vt. 170.
16 9 Bush. 572.
17 26 Ind. 100.
18 Supra.