

Rewards for the Return of Lost Property: Are They Void in New York?

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REWARDS FOR THE RETURN OF LOST PROPERTY: ARE THEY VOID
IN NEW YORK?*Introduction*

The legal questions springing from offers of reward have occasioned much legal writing, and are the subject of a long line of decisions throughout the United States. However, a recent decision of the City Court of New York¹ presented an unprecedented view of the legal problem when the court denied the right of a finder of lost property to recover a reward offered by the owner for the return thereof, on the ground that since it is a criminal offense *not* to return lost property to the known owner,² the finder did no more than the law required. Under such circumstances, the court concluded, a return of the property to the owner could not be deemed an act sufficient to make the promise of reward binding on the owner.

At first blush this decision would appear to be a logical and conclusive application of established principles of contract law. Before commencing upon detailed analysis of the specific problem at hand, a brief review of the general principles of reward contracts will be treated.

Nature of Reward Contract

The basis of the right to a reward is in the nature of a unilateral contract, consisting of a promise for an act. The promise is usually that of a sum of money or other compensation offered to the public generally for the performance of a designated act;³ the method of its publication has no effect on its validity.⁴ The acceptance of the

¹ *Rheinbauer v. DeKrieges*, 188 Misc. 747, 67 N. Y. S. 2d 211 (N. Y. City Ct. 1946).

² N. Y. PENAL LAW § 1300, which provides: "A person, who finds lost property under circumstances which give him knowledge or means of inquiry as to the true owner, and who appropriates such property to his own use, or to the use of another person who is not entitled thereto, without having first made every reasonable effort to find the owner and restore the property to him, is guilty of larceny."

This law has since been reinforced in New York City by amendment to the Administrative Code adopted in 1943, requiring finders of lost property exceeding ten dollars in value to deposit such property with police department within ten days after the finding thereof; violation or neglect to comply with this statute is made a misdemeanor. ADMINISTRATIVE CODE OF THE CITY OF NEW YORK § 435-4.1, added by Local Laws of N. Y. 1941, No. 65; repealed and reenacted by Local Laws of N. Y. 1943, No. 47. See *Garramone v. Simmons*, 177 Misc. 330, 30 N. Y. S. 2d 465 (Sup. Ct. 1941).

³ *Shuey v. United States*, 92 U. S. 73 (1876); *Zwolaneck v. Baker Mfg. Co.*, 150 Wis. 517, 137 N. W. 769 (1912); *Kinn v. First Nat. Bank*, 118 Wis. 537, 95 N. W. 969 (1903); *Umatilla County v. Estes*, 105 Ore. 248, 208 Pac. 761 (1922); RESTATEMENT, CONTRACTS § 28, illustration 1 (1933).

⁴ *Zwolaneck v. Baker Mfg. Co.*, 150 Wis. 517, 137 N. W. 769 (1912) (orally); *Ryer v. Stockwell*, 14 Cal. 134, 73 Am. Dec. 634 (1860) (advertisement in newspaper).

offer is the act of performance of the service requested in the offer. Until accepted, the offer is a mere proposal, and is revocable before anything has been done in reliance thereon.⁵ However, the offer can be revoked only in the manner in which it was made, or in some other manner which will give as much publicity as the offer did.⁶ It is also well settled, at least so far as private rewards are concerned, that there can be no contract unless the offeree, when giving the desired service, knew of the offer of the reward and voluntarily acted with the intention of accepting such offer.⁷ The reason for this is that the act may be equivocal, and therefore it is reasonable to require proof of knowledge and intent. An exception to this general rule is sometimes found where the reward is offered in public statutes, on the ground that such a reward is in the nature of a bounty, and that the principles of contract do not apply.⁸

As in the case of other contracts, a consideration is necessary to support the contract for a reward, and without it the contract is void and unenforceable.⁹ The consideration for the promise is the act; performance of which the offeree was not already legally bound to do. The consideration which supports the reward contract is not benefit to the promisor. It is the trouble, inconvenience or detriment of the promisee incurred in reliance upon the promise when he has done some act which he was not legally bound to do.¹⁰ However, where the offeree performs an act which he was already

⁵ United States v. Conner, 138 U. S. 61 (1891) (repeal of statute offering reward); Shuey v. United States, 92 U. S. 73 (1876); McClaughry v. King, 147 Fed. 463 (8th Cir. 1906); Wilson v. Stump, 103 Cal. 255, 37 Pac. 151 (1894); Carr v. Mahaska County Bankers' Assoc., 222 Iowa 411, 269 N. W. 494 (1936). See Note, 107 A. L. R. 1085 (1937).

⁶ Shuey v. United States, 92 U. S. 73 (1876); Sears v. Eastern R. R., 14 Allen 433 (Mass. 1867); Sullivan v. Phillips, 178 Ind. 164, 98 N. E. 868 (1912); RESTATEMENT, CONTRACTS § 43, illustration 1 (1933). See Note, 107 A. L. R. 1086 (1937); Payne v. Lautz Bros. & Co., 166 N. Y. Supp. 844 (City Ct. of Buffalo 1916), *aff'd*, 185 App. Div. 904, 171 N. Y. Supp. 1094 (4th Dep't 1918) *semble*.

⁷ Arkansas Bankers' Ass'n v. Ligon, 174 Ark. 234, 295 S. W. 4 (1927); Howland v. Lounds, 51 N. Y. 604 (1873); Fitch v. Snedaker, 38 N. Y. 248 (1868); Sheldon v. George, 132 App. Div. 470, 116 N. Y. Supp. 969 (4th Dep't 1909); Vitty v. Eley, 51 App. Div. 44, 64 N. Y. Supp. 397 (4th Dep't 1900); RESTATEMENT, CONTRACTS §§ 53, 55. See Note, 53 A. L. R. 542 (1931).

⁸ Smith v. State, 38 Nev. 477, 151 Pac. 512 (1915) (reward offered by Governor, pursuant to act of the Legislature); Clinton County v. Davis, 162 Ind. 60, 69 N. E. 680 (1904) (reward offered in public statute); Choice v. Dallas, 210 S. W. 753 (Tex. Civ. App. 1919); see Broadnax v. Ledbetter, 100 Tex. 375, 377, 99 S. W. 1111, 1112 (1907).

⁹ Presbyterian Church v. Cooper, 112 N. Y. 517, 20 N. E. 352 (1889); Young v. Hill, 67 N. Y. 162 (1876); Justice v. Lang, 42 N. Y. 162 (1870); Harris v. Carter, 3 E. & B. 559, 118 Eng. Rep. 1251 (Q. B. 1854).

¹⁰ Furman v. Parke, 21 N. J. L. 310 (Sup. Ct. 1848); Ryer v. Stockwell, 14 Cal. 134 (1860); Carlill v. Carbolic Smoke Ball [1893] 1 Q. B. 256.

bound to do, he sustains no legal detriment, and does not furnish a sufficient consideration for the promise made to him.¹¹

It is this last mentioned element of the reward contract—consideration—with which we are primarily concerned in light of the case of *Rheinbauer v. DeKrieges*,¹² the pertinent facts of which follow.

The Principal Case

On January 5th, 1940, the defendant inserted for publication in newspapers published and circulated in the City of New York, an announcement or advertisement, as follows: "Bracelet containing 24 marquise, 12 half-moon, 78 baguette, 30 pentagon, 436 round diamonds; lost New Year's Eve at Hotel Plaza; liberal reward. Whitehall 3-1336." Prior to publication of this advertisement, and on January 1st, 1940, the plaintiff found and lawfully acquired possession of the subject bracelet and preserved it in his possession until the true owner thereof could be ascertained and established. The plaintiff identified the defendant owner through the above mentioned advertisement, and returned the lost bracelet to the defendant who refused to pay the promised reward to plaintiff. This action, in the words of the court, was "an attempt by the plaintiff to have the court make a determination of what would constitute a 'liberal reward', and to render judgment for such amount."¹³ The court found it unnecessary to do either.

Relying on its interpretation of Section 1300 of the New York Penal Law and the Section 435-4.1 of the Administrative Code of the City of New York¹⁴ the court held that no contract between plaintiff and defendant resulted. In dismissing the complaint the court said that, ". . . The plaintiff in this case did that and only that which was imposed on her as a duty pursuant to law and the performance of such an act or obligation constitutes no consideration to support a promise for the payment of a reward."¹⁵

Before going further, it should be recalled that the mere fact that the finder of lost property in the first instance obtained possession of such property lawfully, is no defense to a prosecution for larceny, when he subsequently wrongfully withheld or appropriated such property to his own use.¹⁶ In other words, the finder of an unidentified article is not criminally liable for not performing the impossible act of returning it to the owner. But the duty does come into being when he receives knowledge of the true owner. By this reason-

¹¹ *Smith v. Whilden*, 10 Pa. 39, 49 Am. Dec. 572 (1848); *Coleman v. Burr*, 93 N. Y. 17 (1883); *WHITNEY, CONTRACTS* § 45 (4th ed. 1946); see note 9 *supra*.

¹² 188 Misc. 747, 67 N. Y. S. 2d 211 (N. Y. City Ct. 1946).

¹³ *Id.* at 747, 67 N. Y. S. 2d at 212.

¹⁴ For text and discussion of these statutes, see note 2 *supra*.

¹⁵ 188 Misc. 747, 748, 67 N. Y. S. 2d 211, 213 (N. Y. City Ct. 1946).

¹⁶ N. Y. PENAL LAW § 1290(2).

ing it would appear to be conclusive that the act of returning a lost article to the true owner is an act required by law, and as such, the act cannot be a sufficient consideration for the offer of a reward.

But the decision in the *Rheinbauer* case, based as it is upon the court's interpretation of the Penal Law and the Administrative Code, is subject to sound objections.

Keeping in mind the general rule that a criminal statute is to be strictly construed, let us look at Section 1300 of the Penal Law. It is composed of two distinct parts or elements. The first part reads: "A person, who *finds* lost property under circumstances which *give* him knowledge or means of inquiry as to the true owner, . . ." thus describing the class of persons to be affected by the statute by the circumstances of the finding. The next part reads; ". . . and who appropriates such property to his own use, or to the use of another person who is not entitled thereto, without having first made every reasonable effort to *find the owner and restore the property to him*, is guilty of larceny" (italics mine). The second element imposes a duty of performance upon the class of persons described in the first element. In other words, a person answering the description in the first part of this statute must perform the duty prescribed in the second part thereof, or be guilty of larceny. Obviously then, if a person does not fit the exact description of the first clause, he is not under any obligation to perform the duties prescribed in the second part.

Looking again to the first clause of the above section, we see that the person described is one who *finds* lost property under circumstances which *give* him knowledge or means of inquiry as to the true owner of that property. These circumstances of finding are described in the *present* tense. By necessary implication, therefore, the circumstances which give the finder knowledge as to the true owner must be circumstances *at the time of the finding* of lost property. Clearly then, the finder who acquires his knowledge of the true owner *after* he has found the property is not of the class of persons described in this part of the statute, and is not subject to perform the duties laid down in the subsequent part of Section 1300.

Without going any further, that is, without even inspecting the obligation imposed under the second clause, we can now see the patent error of the decision in the *Rheinbauer* case. At the time of the finding, the plaintiff in that case had no knowledge or means of inquiry as to the true owner. The fact that the plaintiff subsequently acquired such knowledge, through the defendant's advertisement, *several days later*, could not bring her within the provisions of Section 1300, which, as we have seen, applies only to knowledge at the instant of the finding. Thus, the plaintiff was never bound to perform the obligation stated in the latter part of that section. She was not bound by any legal obligations, and therefore, the court's finding that the plaintiff did only that which she was legally bound to do by

the penal law and did not give consideration for the promised reward, is manifest error.

Now, for the purpose of seeing whether it is possible for a finder to enter into a binding and enforceable reward contract, even though he has knowledge of the owner at the time of the finding, let us further examine the exact nature of the obligation imposed on such a person by Section 1300 of the Penal Law.

The second element of this statute obligates the person described in the first element to make ". . . every reasonable effort to find the owner and *restore* the property to him, . . ." (Italics mine). To put it in a simpler form, the statute requires the person who has found lost property with knowledge of the owner to restore such property to the owner. The obligation thus imposed is to *restore* the property to the owner; the statute does not say that the finder must *return the property into the actual possession* of the owner. From this observation it is reasonable to assume that if the legislature had intended the latter meaning, they would have used the word "return" rather than the word "restore." The reasonableness of this interpretation can be clearly seen if we reflect on the following illustration. Suppose that B, a resident of the city of Buffalo, in this state, while visting in New York City, loses his wallet. A, a resident of New York City, innocently finds the wallet which is clearly identifiable as B's property from documents therein. Surely, in such circumstances, A would not be held guilty of larceny because he did not take an expensive trip of several hundred miles to return the wallet into B's possession. Rather A could *restore* the property by writing a letter to B, advising him that the wallet will be turned over to B upon his properly identifying himself as the owner.

By this reasoning, the finder can restore the property to the owner by several alternative methods, none of which amount to an actual return of the article, but all of which are a sufficient performance so as to discharge the finder from the obligation imposed on him by Section 1300 of the Penal Law. The finder can notify the owner in person, by telephone, telegraph, or by writing a letter, as well as by inserting an announcement directed to the owner in a local newspaper. In New York City, he may deposit the article with the property clerk of the police department, in accordance with Section 435-4.1 of the Administrative Code of that city. In regard to the last method of restoration, it is interesting to note that prior to the 1943 amendment making it mandatory to deposit lost property with the police department of New York City, the Supreme Court of New York held that a finder had only the duty to *report* the finding to the police department, not to deposit the property therewith.¹⁷ Although not directly in point, this would seem to support the above construction that Section 1300 of the Penal Law does not require a return of the

¹⁷ *Garramone v. Simmons*, 177 Misc. 330, 30 N. Y. S. 2d 465 (Sup. Ct. 1941). See note 2 *supra*.

property into the possession of the owner, since mere *notification* to the police certainly does not amount to an actual return to the owner.

Up to this point, we have seen that the finder is under a general duty to restore the property to the owner, that this general duty may be discharged by any one of several alternative methods, that the finder is at liberty to select any one of these methods, and finally that none of these methods of restoration amount to an actual return of the property into the possession of the owner.

From these observations, we may conclude that the act of *returning* as distinguished from restoring the lost property to the true owner, is an act not required of any finder by Section 1300 of the Penal Law; and, therefore, such an act is good consideration for an offer of reward notwithstanding that the finder had actual knowledge of the owner's identity at the time he found the lost property.

Assuming these observations to be correct, it is clear that the decision in the *Rheinbauer* case is incorrect and is not a true expression of the law in New York. *First*, the plaintiff in that case was not one of the class of finders upon whom Section 1300 of the Penal Law imposes its obligation, since the plaintiff did not have knowledge of the owner at the time she found the property. It was error to base the decision on that statute. *Second*, even if the plaintiff had been one of the class of finders referred to above, nevertheless, her act of *returning* the property to the defendant was an act not required by Section 1300 of the Penal Law. It was error, therefore, to hold that the plaintiff did not give sufficient consideration to support the defendant's promise of a reward.

In an attempt to clarify and justify the unforeseen harshness of its decision, the court distinguished the principal case, *where notice of identity of the owner comes to the finder through the medium of the offer of reward after the property is already in the possession of the finder, from the case where, acting upon an advertisement of this nature, lost property is sought after and found*. Of the latter type case the court said, ". . . an act not required of the finder is induced by the offer of reward, and, in acting upon such offer, a consideration results . . ." ¹⁸

That performance of acts which differ, or are in addition to, the duty owed to the promisor or to the public, is sufficient consideration, is too well settled to require citation of authority. The real issue for determination is whether or not the finder in the first situation above stands in any different position, so far as consideration is concerned, than the finder who is induced to search for the property by the offer of reward. The writer's search reveals no case on all fours with the *Rheinbauer* case either in New York or in any state; therefore, the solution must be sought after by the process of deduction and induction from holdings of cases not directly in point.

¹⁸ 188 Misc. 747, 749, 67 N. Y. S. 2d 211, 213 (N. Y. City Ct. 1946).

In the case of *Pierson v. Norch*,¹⁹ an action was brought to recover the amount of a reward for the return of lost property as advertised in a newspaper. The plaintiff had found the property on a railroad train. She made no inquiries as to the true owner, but returned the property after reading the defendant's public announcement. After granting judgment to the plaintiff on the ground that there was a valid and binding contract created between the parties, the court went on to make the following statements on the question of larceny of lost goods: "Under the circumstances the jury might have found . . . a dishonest intention to take and carry away the property; there would then have been a trespass or larceny; but no want of care or earnestness or even an entire omission of inquiry would necessarily give to that act such a quality. If the plaintiff really found and took possession of the goods, believing them to be lost, and with a purpose to preserve and return them if possible to the owner, she was in condition to claim the reward upon complying with its terms."²⁰ (Italics mine.) However, it must be borne in mind that the court's interpretation of larceny of lost articles in this case was based upon the common law. The predecessor to our present Section 1300 of the New York Penal Law, which defines the finder's duties, was not enacted until one year after the decision in the *Pierson* case.²¹

Nevertheless, we find support of the court's views in an opinion expressed by the Attorney General of New York. In regard to the present statute, he said, "Where the finder has knowledge or means of inquiry as to the true owner, he must make every *reasonable effort* to find the owner; . . . where knowledge or means of inquiry do not exist he should make *some effort* to locate the owner."²² (Italics mine.) This statement seems to indicate that the finder of *unidentifiable* property is not guilty of larceny for not performing the impossible task of returning it; and that the mere retention and preservation of the property, with the manifest intent to retain it until the owner can be located, and to claim any offered reward, is not a crime.

From this it may reasonably be concluded that since the finder already has formed the intent to return the property upon identifying the owner, and the owner intends to give a reward for the return thereof by the very words of his advertisement, therefore, upon a return of the property there is mutual assent by both parties, and, notwithstanding the public duty imposed by the criminal law, a valid contract has been consummated.

The law does not completely overlook the morals of society. In fact the very statute now under consideration was obviously enacted as a legal threat to finders of lost property; a weapon with which

¹⁹ 82 N. Y. 503 (1880).

²⁰ *Id.* at 506.

²¹ Laws of N. Y. 1881, c. 676, § 539.

²² 1934 Op. Atty. Gen. 101.

to "prompt" such persons to perform their duty to their neighbors. It is equally clear that the owner of lost property offers a reward for its return as an inducement to the finder to return it though we may presume that the owner knows the finder is legally bound to return his property, he also knows that the finder might easily convert the property to his own use and skillfully avoid criminal prosecution therefor. The owner who publicly offers a reward for the return of his property intends it to be additional inducement to the finder to perform his legal and moral duty. The reward assures the owner of a return of his property forthwith; it assures him that there will be no delay, no civil or criminal actions, no trouble in speedily regaining possession of his property. With such a motive, with such clear intent, it cannot seem other than unjust to allow the owner boldly to deny any liability under the cover of a statute which has at its very core, a purpose to further promote a moral cause.

Unless and until there is a decision on this question by a court of last resort, the only speedy way to clarify the right to a reward is by state legislation. At least two states in the Union have taken such action. Both Iowa and Montana have criminal statutes requiring the finder of lost goods to return same to the known owner, similar to the Section 1300 of the New York Penal Law.²³

These states have recognized the problem which can be raised by a seemingly perfect legal defense to a claim for reward, and have obviated this doubt by enacting statutory rewards. The Iowa statute provides: "Before restitution of the property . . . shall be made, the finder shall be entitled to ten per cent. upon value thereof."²⁴ The Montana statute entitles the finder of lost property to compensation for "all expenses necessarily incurred by him in its preservation, and for any other service necessarily performed by him about it, and to a reasonable reward for keeping it."²⁵

Such statutes have been held valid²⁶ and not inconsistent with the criminal statutes providing for restoration to the owner of the property by the finder.²⁷ Rather, the courts have held that the reward statutes are enacted for the laudible purpose of aiding people to find their lost property by *the benefit of a public search therefor*, and *must be considered beneficial*.²⁸ In respect to the Iowa reward statute, the court said, ". . . (the statute) in effect declares it to be

²³ IOWA CODE ANN. § 709.11 (1946); MONTANA REV. CODE ANN. § 94-2709 (1947).

²⁴ IOWA CODE ANN. § 644.13 (1946); see *Flood v. City Nat. Bank of Clinton*, 218 Iowa 898, 253 N. W. 509 (1934).

²⁵ MONTANA REV. CODE ANN. § 20.404 (1947); see *Kirk v. Smith*, 48 Mont. 489, 138 Pac. 1088 (1914).

²⁶ *Flood v. City Nat. Bank of Clinton*, 218 Iowa 898, 253 N. W. 509 (1934) (holding, among other things, that such a statute is not an unlawful deprivation of property).

²⁷ *Ibid.*

²⁸ *Ibid.*

the public policy of this state for the good and welfare of its people to provide a reward to the finder of lost goods. . . . (it) is in effect simply awarding a compensation for the service of finding such lost goods. The owner has been benefited by the plaintiff's act in finding the money."²⁹

In considering the Iowa treatment of the reward problem, it should be noted that in the case of *Flood v. City Nat. Bank*³⁰ the defendant therein denied his liability to pay the statutory reward on the precise point of the *Rheinbauer* case, namely, that the plaintiff was bound by a criminal statute to return the property to the known owner. For the reasons declared above, the court stated that it is "*immaterial whether the finder of lost goods does or does not know to whom the property belongs.*"³¹ (Italics mine.)

Conclusion

It is respectfully submitted that the court in the *Rheinbauer* case construed Section 1300 of the New York Penal Law in such a broad sense as to extend its scope into a field never intended by the legislature. Although there is no New York case in point, it is apparent from the preceding discussion of the laws of Iowa and Montana that a criminal statute requiring the finder to return lost property to the known owner is not intended to nullify the beneficial result of reward contracts. These states have expressly declared this intent in their statutes. There is no valid reason to negate the presumption that such was also the intent of the New York Legislature; intent to punish criminals, not to punish honest men. For such is the harsh result of the reasoning of the *Rheinbauer* case.

Since the application of the law in the *Rheinbauer* case may, in an unnaturally broad sense, be said to be legally correct, it is earnestly to be hoped that the Legislature of New York will take some formal action to clarify its intent.

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²⁹ *Id.* at 904, 253 N. W. at 514.

³⁰ 218 Iowa 898, 253 N. W. 509 (1934).

³¹ *Id.* at 901, 253 N. W. at 511.