very freshness being the result of the washing with tannic acid. Thus also in a case of *tromp-l'oeil* in a French court; the ring or border of paste which had previously united the two papers could at once have been brought in view by washing the paper with a solution of iodine. It seems that in the French courts every manipulation or experiment necessary to elucidate the truth in the case, even to the destruction of the document in question, is allowed, the court as a matter of precaution, being first furnished with a certified copy of the same.

In the many cases of alleged fraudulent papers put in my hands for examination, I have rarely found any insurmountable difficulty in coming to a conclusion, such conclusion being based upon the principles which I have set down as requisite in my opinion, to be acted upon in all this class of testimony. As in cases involving blood examinations each case must be investigated by itself alone, as in almost every case new facts present themselves. Still general principles may be laid down so that with the aid of the microscope and other necessary instruments, and chemical re-agents, one may be prepared to solve this class of questions with almost unerring certainty, or at least to avoid coming to any wrong conclusions. Thus it will be seen that as I view the subject, this important class of testimony in all its phases, as now managed in the courts, so far from furthering the ends of justice, is more calculated to favor the wrongdoer; that there is no inherent necessity of such a condition of things, either in the nature of the subject itself, or in the present state of scientific knowledge; but that the fault is wholly due to the practice of the courts, which are governed in this respect, in most cases, by tradition and precedent rather than by logical reasoning or scientific deduction.

R. U. PIPER.

Chicago, Ills.

RECENT ENGLISH DECISIONS.

High Court of Justice; Common Pleas Division.

BENT *v.* THE WAKEFIELD AND BARNSLEY UNION BANK.

Where a reward is offered for information leading to the apprehension of a felon, a police constable, to whom the felon has voluntarily offered to surrender himself, is not entitled to the reward.

England v. *Davidson*, 11 A. & E. 856, commented upon.

THIS was an action tried before GROVE, J., at the Bristol Summer Assizes 1878. It was reserved for further consideration.

The facts of the case and the arguments on further consideration sufficiently appear in the judgment.

Arthur Charles, Q. C., for the plaintiff, cited *Smith* v. *Moore*, 1 C. B. 438; *England* v *Davidson*, 11 A. & E. 856.

H. T. Cole, Q. C., and *Templer*, for the defendants, cited *Thatcher* v. *England*, 3 C. B. 254; *Lancaster* v. *Walsh*, 4 M. & W. 16; Snowden on Constables, p. 152; *Cowles* v. *Dunbar*, 2 C. & P. 565.

The opinion of the court was delivered by

GROVE, J.—This case was tried before me at Bristol at the last summer assize. It was an action for a reward of 200*l.* offered in a handbill, published by the defendants, in the following terms: "200*l.* Whereas, on the 26th of June last, William Glover, shoddy and mungo dealer, of Osset, absconded from Osset, after committing various forgeries on several manufacturing firms in the West Riding of Yorkshire; notice is hereby given that the above reward will be paid to any person or persons giving such information to Mr. William Airton, superintendent of police, Dewsbury, or to Mr. William Halls, superintendent of police, Wakefield, as will lead to the apprehension of the said William Glover. West Riding Police Office, Wakefield, 27th of July 1877."

The plaintiff's case, on which my judgment must be founded, was shortly stated as follows: On the 30th of November 1877, a person presented himself at the police office, Exeter, and on the plaintiff, who was chief constable for Exeter, being sent for, the man, who was, in fact, Glover, said, according to the plaintiff's evidence, "You hold a warrant for me. I am wanted for forgery." The plaintiff asked his name and what he was. He said, "You know already, and hold the warrant." Some further conversation took place. The plaintiff thought the man was out of his mind, or had been drinking, and recommended him to go to an hotel. The plaintiff then left him in a private room, searched the "Police Gazette," and found the name "William Glover," wanted for forgery. He got him to take off his hat, and in his own words, "I satisfied myself after reading the 'Police Gazette' when he took his hat off." The plaintiff then telegraphed to Mr. Airton, superintendent at Dewsbury, "Do you hold warrant for the apprehension of William Glover, for forgery?" and received a telegram

in return, "I still hold warrant for Glover, and should like him to be apprehended." Upon that the plaintiff apprehended and charged the man, who was ultimately convicted.

For the defendant, evidence was given to prove that Glover gave his name before the telegram was sent, and also that he was taken into custody before it was sent. I left these two questions to the jury, and they found that Glover was not in custody before the telegrams, but could not agree, and after being locked up were discharged as to the first question; counsel agreeing that they would accept the finding on the second question for the purposes of the case.

The point reserved and argued before me, on further consideration, was whether or not the plaintiff was entitled to the reward. For the plaintiff, it was argued that he was the person to be taken to have given the information leading to the apprehension, within the meaning of the handbill; for the defendants, that the criminal Glover had given the information himself; and, secondly, that on grounds of public policy, the plaintiff was not entitled to the reward.

I am of opinion that the defendants are entitled to judgment. It was not contended that the mere fact of being the person who first communicated with Airton, would be sufficient to entitle the plaintiff to success, supposing the information to have been given to the plaintiff by some one other than the criminal himself; indeed the very able and learned counsel for the plaintiff said, in answer to me (though I do not wish, and ought not to tie him to his admission), that if Glover had given information to Airton, Airton would have been entitled to the reward. I think he could hardly have avoided this admission. Airton and Halls, it seems to me, are persons mentioned as proper to be communicated with; but if the information had been given direct to those offering the reward, and had led to the apprehension, I should consider that sufficient. In *Lancaster* v. *Walsh*, where no person was named to receive the information, but the reward was to be given on application to the defendant, Mr. Baron PARKE says: "It seems to me that any communication to the constable, whose duty it was to search for the offender, was within the terms of the handbill, although there was no proof of a communication to the defendant himself." In the same case it is held by the same learned judge that "the party who first gave the information, and he alone, is to have the benefit;" and Mr. Baron ALDERSON says: "Information means the communication of material

facts for the first time." It appears to me that the first information given in the present case to a person authorized to act was that given by the criminal himself; and although he, on grounds of public policy, ought not to be entitled to the reward, still, where a constable may apprehend a criminal (Snowden on Constables, p. 152; Com. Dig. tit. *Justices of Peace*, B. 79), is the mere channel of communication, and only makes inquiries for the purpose of satisfying himself, he is not the person giving the information within the true meaning of the advertisement. The apprehension is not the consequence of the constable's information, but of the criminal's surrender of himself to justice. To use the words of Chief Justice TINDAL, in the case of *Thatcher v. England*, "The clue once found, the plaintiff, in apprehending, did no more than his ordinary duty."

It was argued that, in the case of *Thatcher* v. *England*, the first information was given by the criminal, and yet that the person who communicated that information was the party entitled; but there the communication by the criminal was not made to any one authorized to act in apprehending or procuring his apprehension, but to a person whom seemingly he considered a friend, for the purpose of borrowing money to enable him to go to London and dispose of the property stolen. The communication by the criminal there was not in the nature of information to be acted upon for the purpose of apprehension, and, had the person to whom it was made kept the secret, would not have led to his conviction. In that case it was also held, that though the first police constable to whom the communication was made by his activity and perseverance succeeded in tracing or recovering nearly the whole of the property, and in procuring evidence to convict the thief, he was not entitled to the reward.

The cases mainly relied on for the plaintiff were *England* v. *Davidson* and *Smith* v. *Moore*. The first of these cases bears more on the question of public policy than on the point to which I have hitherto adverted. It was there held, on demurrer, that the fact of the person giving the information being a constable did not necessarily disentitle him on the ground of want of consideration, it being his duty to discover and apprehend felons, or on grounds of public policy. In that case the averments in the declaration were general, viz: that the plaintiff did give such information as led to the conviction, and in the plea that the plaintiff was and is a constable of the district, and that it was his duty to give every

information which might lead to the conviction, and to apprehend him. The short judgment of the court, delivered by Lord DENMAN, is as follows: "I think there may be services which the constable is not bound to render, and which he may, therefore, make the ground of a contract. We should not hold a contract to be against the policy of the law unless the grounds for so deciding were very clear." All that that case decides is that a constable as such is not disentitled to a reward of this description, or necessarily disentitled as against public policy. In *Smith* v. *Moore* a police constable then temporarily suspended apprehended a burglar, who, after his apprehension voluntarily confessed. The constable was held entitled to the reward. There is in that case the obvious distinction from the present that the confession was made after the apprehension effected by the person claiming the reward, who, by his suspicions, and by apprehending on the strength of them, had already done much, probably enough, to earn it.

On the question of public policy I am bound by the case of *England* v. *Davidson*, so far as the judgment in that case extends, and although there may be some distinction as to this point between that case and the present, yet in deciding a case on the ground of public policy, the decision should be based on some broad principle, and one capable of general application. I am unable to see any general principle other than that argued in *England* v. *Davidson*, viz., that a constable is bound by his duty, the duty of his office, to seek for criminals, and to use his utmost efforts to bring them to justice. There are strong arguments of expediency touching the administration of justice and the interest of the state, why constables should not be allowed to receive rewards. The expectation of rewards would offer great temptation to delay an active search, by which delay the criminal might escape, or in a case like the present to delay taking into custody a criminal who gives himself up, so that the constable might appear to use exertions to procure complete information, and for that to claim the reward. There would also be a temptation, particularly to those constables in the detective service, to look to bribes or to seek promises of rewards from persons anxious to recover their property, and unless such were offered to be inert in their efforts. But although the judgment in *England* v. *Davidson* does not enter upon those questions, I must assume that they were present to the minds of the judges who decided that case. Whatever my own opinion may be, it seems to me that I

cannot without over-subtle refinement apply to this case any general principle of public policy which is not involved in that case. If that case is to be reviewed, it must be reviewed in a court of appeal.

The first point is sufficient to decide this case, and I give judgment for the defendants.

Notwithstanding the court in this case preferred to rest its decision upon the special and particular ground, that the plaintiff was not really the person who gave the information which led to the apprehension of the offender, rather than on the broad grounds of public policy, yet it is well settled, in America at least, that officers can not recover a reward offered, when they do only what their duty requires, or when acting solely under their official authority.

This is well illustrated by the case of *Pool* v. *Boston*, 5 Cush. 219 (1849). The city had offered a reward of $2000 for "the detection and conviction of any incendiaries." The plaintiff, a city watchman, *while in the performance of his duty as such*, discovered a person setting fire to a building in his precinct, and on the watchman's complaint he was convicted thereof, and punished, but the plaintiff was held not entitled to the reward, on the ground that he had done no more than his duty, which was either to give notice to the mayor, or chief of police, or else make the complaint himself, and have the arrest made immediately, and if he chose to do the latter, he did not thereby entitle himself to the reward. It is true that in this case the reward was offered by *the city*, in whose service the plaintiff was, and to whom he owed his whole abilities, but this fact does not seem to have been thought material by the court.

The same principle was again applied by the same court in *Davies* v. *Burns*, 5 Allen 349 (1862); in which the proprietors of the Cunard line of steamers, offered a reward for information to the agent or officers of their ships, of goods smuggled or intended to be smuggled thereupon. The plaintiff was a *day* inspector of customs, and was not assigned to inspect a steamer which arrived in the night, but did so, and seized some goods intended to be smuggled, and the owners thereof were convicted on his testimony. He gave information to the defendants of all the facts and claimed the reward; but he was not allowed to recover, upon the broad ground of public policy, because he was acting as officer of the customs, and although not exactly on duty as such, at the moment, but rather a volunteer, he was still acting in his right as an officer, and could not otherwise have had any authority to interfere at all; and while so acting, it was his duty to detect and expose any violation of the revenue laws, without any other compensation than that which was attached to his office; and judgment was entered for the defendants.

The offer of a reward is only one mode of making a contract, and the same principles apply, as if an actual special contract had been made to pay officers extra for doing only their duty; and for which a fixed salary or fixed fees are established by law. In such cases the decisions are uniform in both countries, that the officer cannot recover the extra compensation.

Thus in *Stotesbury* v. *Smith*, 2 Burr. 924 (1760), the defendant promised a sheriff's bailiff who had arrested his friend in a civil action, to pay him six guineas, if he would accept the defendant as his bail; but although he accepted him as offered, he was not allowed to recover, because if the defendant was a responsible party, he was bound to accept him, without compensation; and if he was not responsible, he had no

right to accept him, and therefore he had violated his duty. This is a leading case. See also *Bridge* v. *Case*, Cro. Jac. 103.

Hutch v. *Mann*, 15 Wend. 45 (1835), is a very strong case on this point. There the defendant applied to a constable to arrest his debtor on civil process, which the officer at first declined to do, but upon assurances of being well paid for it, undertook the service, and went with the defendant to the man's house at 3 o'clock at night, and watched until daylight, when he succeeded in arresting him. *Held*, he was not entitled to recover anything beyond his regular legal fees fixed by statute, even though the service was somewhat extra in its character, reversing an opposite decision in 9 Wend. 262. See also *Smith* v. *Whilden*, 10 Barr 39 (1848); *Gillmore* v. *Lewis*, 12 Ohio 281; *Stamper* v. *Temple*, 6 Humph. 113; *Rea* v. *Smith*, 2 Handy 193; *Brown* v. *Godfrey*, 33 Vt. 120.

But there may be cases where a sheriff arrests persons outside of his jurisdiction, where he is entitled to the reward, as much as any private citizen: *Davis* v. *Munson*, 43 Vt. 676. See *Hayden* v. *Songer*, 56 Ind. 42.

So when the law makes it the duty of pilots to give all the aid and assistance in their power to any vessel appearing in distress on the coast, and subjects them to a fine for refusal or neglect so to do, a contract to pay a pilot $500 extra for such duty is void. *Callaghan* v. *Hallet*, 1 Caines 104 (1803).

These and many other similar cases might well have been decided on grounds of public policy alone, and to avoid extortion which might be practised by officers, or persons in authority: but there is another ground, weaker, perhaps, but yet quite sufficient, on which they might rest, viz: want of consideration; for it is elementary law that a promise to pay a person for simply doing what he was already under a legal obligation to do, is invalid for lack of consideration. The promisor receives only that to which he was legally entitled without such promise; the promisee parts with nothing he was not bound to render. So that the same result is reached between private parties, and when considerations of public policy do not apply; or if so, with much diminished force. Therefore a contract by a party to a suit to pay a witness who has already been lawfully summoned, and is bound to attend for his legal fee, an additional compensation as an inducement or compensation for his time, is not binding in law: *Willis* v. *Peckham*, 4 J. B. Moore 300; 1 Brod. & Bing. 515; *Collins* v. *Godfrey*, 1 B. & Ad. 950; *Dodge* v. *Stiles*, 26 Conn. 463.

For similar reasons a contract to pay seamen an extra compensation for merely doing their ordinary duty, for which they shipped, and which is fully covered by their contract, is not binding upon the master or owners: *Harris* v. *Watson*, Peake 102 (1791); *Stilk* v. *Meysick*, 2 Camp. 317; 6 Esp. 129 (1809); *Barttett* v. *Wyman*, 14 Johns. 260 (1817); *Harris* v. *Carter*, 3 El. & B. 559 (1854); *The Araminta*, 1 Spinks 224. But reasons of public policy may perhaps enter into this peculiar contract, and strengthen the force of the objection to its validity.

It is probably on this ground, in part at least, that it was long ago held that a promise by A. to pay B. for discharging C. from an *unlawful* arrest, is not binding, since B. was bound to discharge C. without any promise at all. See *Atkison* v. *Settree*, Willes 482 (1744); *Herring* v. *Dorell*, 8 Dowl. P. C. 604. And see *Dixon* v. *Adams*, Cro. Eliz. 538 (1596); *Preston* v. *Bacon*, 4 Conn. 471. And this suggests the much mooted question, in modern times, whether a promise by A. to pay B. for fulfilling his contract with C. is binding if B. does nothing more, in time or mode, than he was legally bound to C. to do by his contract with him. Of