Price v. Neal and Double Forgeries

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NOTES

PRICE V. NEAL AND DOUBLE FORGERIES

In 1762 the English Court decided the now famous case of Price v. Neal.¹ In this case the drawee of two bills of exchange, to which the drawer’s name was forged, paid their face value to a holder in due course and sought to recover the money on the ground that payment was made under mistake of fact. Recovery was denied. Lord Mansfield stated that it was not against good conscience for the defendant to retain the payment which he had received in good faith and without negligence or suspicion of the forgery. He seemed to feel that the plaintiff, the drawee, was negligent in not discovering the forgery before paying. But even assuming that the drawee was not negligent, the court refused to shift the loss from one innocent party to another equally innocent.

This decision was followed in Bank of United States v. Bank of Georgia,² decided in 1825, and was generally recognized and followed in this country before the adoption of the Negotiable Instruments Law.³ It has been frequently stated that the basis for this rule is the supposed negligence of the bank in failing to detect the forgery and refuse payment.⁴ But there are more fundamental reasons which have led the courts to adopt the rule. It has been held that since the bank upon whom the check is drawn has, or is presumed to have, means of ascertaining the genuineness of the drawer’s signature, while the bona fide holder is wholly without such means, this inequality of footing between the holder and the bank furnishes

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³ Hoffman v. Bank of Milwaukee, 12 Wall. 181, 79 U. S. 181 (1870); Young & Son v. Lehman, 63 Ala. 519 (1879); First Bank v. Ricker, 71 Ill. 439 (1874); National Bank v. Tappan, 6 Kan. 456 (1870); Deposit Bank of Georgetown v. Fayette National Bank, 30 Ky. 10 (1890); Comm. Bank v. First Bank, 30 Md. 11 (1869); Bank of St. Albans v. Farmers & Mechanics Bank, 10 Vt. 141 (1838).
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justification for the rule. It is also claimed that the rule should be defended for the sake of commercial convenience and necessity. Other courts have explained the rule by a theory of "final settlement", stating that as between the drawee bank and good faith holders, the bank is deemed the place of final settlement where all prior mistakes and forgeries shall be corrected once and for all and where, in the absence of objections, payment should be treated as final. It has been generally accepted that the rule of Price v. Neal was given legislative approval by the adoption of Section 62 of the Negotiable Instruments Act. Although one jurisdiction has refused to interpret the term "accepting" to include payment, the vast majority relying on precedent or statute hold that a drawee bank which pays a forged check to a then innocent holder in due course cannot recover. However, there have been frequent expressions of dissatisfaction with the result of the rule since it is clear that facts which gave rise to it 150 years ago no longer apply. It is clearly a fiction to say that each receiving teller in modern banking institutions should know the signature of each of thousands of depositors or that it would be commercially possible...
to check and compare the signature on every instrument presented for payment. It has been pointed out that the rule is applied where the paying bank has not been negligent, such as where the forgery was so skillfully executed that it naturally tended to deceive.\(^{11}\) Also, the rule which places the loss on the drawee bank is a violation of the general principle applicable to the sale and transfer of other personal property\(^{12}\) as well as to the implied warrants of one who transfers negotiable paper.\(^{13}\)

Because of these objections, the Courts, although accepting the letter of the rule, have shown a tendency to avoid its application where possible. Cases involving double forgeries, that is, where the payee's name as well as that of the drawer is forged, have presented such an opportunity. Most courts have allowed the drawee bank to recover the payment made to the transmitting bank. Dean Ames justifies this by pointing out that in the case of a forged indorsement the holder does not have legal title to the instrument but that it belongs to the person whose name was forged as indorser. Thus, any money collected on the bill or note would be held in a constructive trust for the benefit of the true owner, who could recover the money, as money had and received to his use.\(^{14}\)

A few courts have allowed recovery in \textit{Price v. Neal} situations by applying Section 66 of the Negotiable Instruments Law\(^{15}\) which provides: "Every indorser . . . engages . . . that if it be dishonored . . . he will pay the amount thereof to the holder, or to any subsequent indorser who may be compelled to pay it." However, the great weight of authority holds that the drawee is not a holder in due course and therefore not entitled to the benefit of the warranty.\(^{16}\)

Some cases allowing recovery by the drawee bank reason that since the whole doctrine of \textit{Price v. Neal} is based on a

\(^{11}\)Hardy v. Shesapeake Bank, 51 Md. 563, 585 (1879).
\(^{12}\)Young v. Cole, 3 Bing. N. C. 724. However, it is said that the relationship of holder to drawee is altogether different than that of vendor and vendee. See Ames, \textit{The Doctrine of Price v. Neal} (1891) 4 Harv. L. Rev. 297.
\(^{13}\)Negotiable Instruments Law, Sec. 65-1.
\(^{14}\)\textit{Supra} note 12, 307.
\(^{15}\)Judge v. West Phila. Title & Trust Co., 68 Pa. Sup. Ct. 310, 315 (1916); Interstate Trust Co. v. United States Nat. Bank, 67 Colo. 6, 185 Pac. 260 (1919).
theory of negligence, contributing negligence of the transmitting bank should be a defense.\(^7\) The majority of courts hold that since it is the general practice of bankers when purchasing commercial paper, to make a reasonable inquiry as to the identity of the payee, the indorsement of a purchasing bank, not qualified or limited in any respect, amounts to a representation that such precaution has been taken.\(^8\) And, if the proper precautions have not been taken and the indorsement is in fact a forgery, the transmitting bank by its representation has misled the drawee bank and lulled it into a less careful scrutiny of its depositor’s signature, thus making possible the success of the fraud.\(^9\) In order to remove a case from the doctrine of \textit{Price v. Neal} and allow a recovery from the transmitting bank, it must have failed to exercise the ordinary precautions of prudent banking.\(^10\)

That the rule of \textit{Price v. Neal}\(^21\) is both unjust and unsound in principle is apparent from the attempts of the courts to disregard it wherever possible, as in the case of double forgeries. Moreover, the very number of the different explanations of this exception leads one to distrust its validity. The writer believes that although the courts have reached a just conclusion in the double forgery cases they have fallen into error in attempting to justify an "exception" to \textit{Price v. Neal} which is itself an exception. This so-called "exception" is in fact an application of the general principles of law which imply a warranty as to the existence and validity of property sold and which allow a


\(^8\) Bank of Williamson v. McDowell County Bank, 66 W. Va. 545, 66 S. E. 761 (1910).

\(^9\) Woods v. Colony Bank, 114 Ga. 683, 40 S.E. 720 (1902); People’s Bank v. Franklin, 88 Tenn. 299, 12 S.W. 716 (1889).


recovery on money paid under mistake of fact. Hence, when the special circumstances which gave rise to the doctrine are not present, that doctrine should not be applied and the case is governed by the general principles of law to which *Price v. Neal* is an exception.

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