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BILLS AND NOTES - PRICE v. NEAL - DUTY OF PRESENTER BANK TO MAKE INQUIRY

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BILLS AND NOTES — PRICE V. NEAL — DUTY OF PRESENTER BANK TO MAKE INQUIRY — A stranger opened an account in the defendant bank and deposited therein several large checks (payable to himself) forged with the signature of the president of the plaintiff bank and drawn on the plaintiff. The checks were indorsed by the forger, and also by the defendant, the latter "guaranteeing prior indorsements." After payment by the plaintiff, the amounts were credited to the forger's account and soon thereafter withdrawn. The plaintiff alleged a local banking custom which required careful watching of new accounts and which the defendant failed to observe. On demurrer to the plaintiff's petition, *held*, that the rule of *Price v. Neal*[1] is in force under the Negotiable Instruments Law and that the plaintiff has failed to allege sufficient acts of carelessness on the part of the defendant to prevent the operation of the rule. *Commerce-Guardian Bank v. Toledo Trust Co.*, 60 Ohio App. 337, 21 N. E. (2d) 173 (1938).

The American courts have almost universally adhered to the rule, first stated by Lord Mansfield in *Price v. Neal*, that a paying drawee cannot recover from the presenter of a forged bill.[2] In a leading article on the subject, to which this note is an addendum, the boundaries of this familiar doctrine were marked out.[3] For the present purpose it will suffice merely to refer briefly to a few of the conclusions there reached: first, that the more reasonable explanation of *Price v. Neal* is business expediency; second, that it is the more generally accepted view that section 62 of the Uniform Negotiable Instruments Law, which deals with the liability of an acceptor but makes no express provision with respect to a paying drawee, was meant to include payment as well as acceptance; and third, that complicity in the fraud or negligence on the part of the presenter which contributes to the success of the forger "should overbalance any argument in the interest of business expediency" and consequently deny the presenter protection of the rule. In the principal case the question was raised: At what point between mere indorsement of a forged check for payment (in the exercise of reasonable care), on the one hand, and actual complicity in the fraud, on the other hand, should the line be drawn beyond which recovery by the drawee will be allowed? The first assumption made by the court, that an indorsement

[1] 3 Burr. 1354, 97 Eng. Rep. 871 (1762).
[2] WOODWARD, QUASI CONTRACTS, § 80 (1913).
[3] Aigler, "The Doctrine of Price v. Neal," 24 MICH. L. REV. 809 (1926).

"for collection" could not in any sense be an inducement to the drawee to relax its vigilance is not to be denied.[4] More dubious would seem to be the notion that an indorsement guaranteeing prior indorsements has a comparable legal effect. In the case at hand, especially, where the only prior indorsement on the check was that of the forger-payee, would such a rule require very cautious application. A second proposition, and one on which the decision largely rests, is that "under the authorities such failure to make inquiry must have induced or caused the drawee bank to be thrown off its guard or misled or to have relaxed its vigilance." [5] If such were the rule, then it would seem a necessary result that one who has purchased a check with suspicion of the forgery should be allowed the defense of *Price v. Neal* so long as his failure to make inquiry did not induce the drawee to relax its vigilance. The section that the court quotes from *Corpus Juris Secundum* would seem to oppose such a narrow doctrine and include those cases where by reasonable inquiry of its depositor the presenter bank might itself have been able to uncover the forgery and thereby prevent the drawee's mistake.[6] One more point in the opinion merits discussion. It is said, in effect: recovery of money paid by mistake is allowed on the theory of unjust enrichment, and, since the money paid is now in the hands of the forger, the defendant cannot be said to have been enriched thereby. It seems plain that the court could not have meant to limit a drawee's recovery to cases where the defendant has made a "profit" on the transaction, for in such case the courts allow recovery even where the defendant has exercised the high-degree of care.[7] As a makeweight, however, it would seem proper to consider the fact that the defendant has made no profit on the deal. By the authorities, the cases which have allowed recovery on failure of the presenter to make reasonable inquiry of a stranger are generally classified as an equitable exception to the rule of *Price v. Neal.*[8] It is submitted that definitive rules of conduct should be formulated with the greatest care lest decisions "on the equities" be given an unintended significance and hamper the free application of this highly salutary doctrine.

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[4] First Nat. Bank of Belmont v. First Nat. Bank of Barnesville, 58 Ohio St. 207, 50 N. E. 723 (1898); Security Commercial & Savings Bank v. Southern Trust & Commerce Bank, 74 Cal. App. 734, 241 P. 945 (1926), noted 24 MICH. L. REV. 607 (1926).

[5] Principal case, 60 Ohio App. at 347.

[6] 9 C. J. S. 759 (1938). The sentence pertinent to the present discussion follows: "This rule [Price v. Neal], however, does not prohibit the bank from recovering from forgers, thieves or those who have no title to the instrument, *or from a holder who by his negligence or fault has proximately contributed to the success of the fraud*, or has misled the bank, or from one who is not a holder for value or who will be in no way prejudiced by being compelled to make repayment to the bank." (Italics added.) See Farmers' Nat. Bank of Augusta v. Farmers' & Traders' Bank of Maysville, 159 Ky. 141, 166 S. W. 986 (1914), where a host of cases are critically discussed.

[7] American Surety Co. of New York v. Industrial Savings Bank, 242 Mich. 581, 219 N. W. 689 (1928), noted 27 MICH. L. REV. 100 (1928). But see comment by Professor Aigler, 28 MICH. L. REV. 743 (1930), in which the reasoning of this and similar decisions along a "holder in due course" analogy is questioned.

[8] Aigler, "The Doctrine of Price v. Neal," 24 MICH. L. REV. 809 at 820 (1926); BRANNAN, NEGOTIABLE INSTRUMENTS LAW, 6th ed., by Beutel, 769 et seq. (1938).