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BILLS AND NOTES - RULE OF PRICE v. NEAL - APPLICATION TO NONNEGOTIABLE INSTRUMENTS AND MONEY ORDERS

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BILLS AND NOTES — RULE OF PRICE V. NEAL — APPLICATION TO NON-NEGOTIABLE INSTRUMENTS AND MONEY ORDERS — From a Mississippi post office, *B* stole fifty-five postal money order blanks. Notice of the theft was sent by the Post Office Department to all post offices. *B* filled in twelve of the blanks, making them appear genuine in all respects, and presented them to be cashed at defendant bank. In reliance on a confirmation of the validity of the money orders, received by calling a branch post office, defendant cashed them, giving *B* cash and travelers checks and starting a bank account for the balance. Defendant presented the orders at the main post office, and they were paid without their spuriousness being discovered. When the money orders were forwarded to Washington, the Post Office Department discovered the fraud and sued within a reasonable time for money paid by mistake. In defense, defendant argued that the doctrine of *Price v. Neal*[1]—that money paid by the drawee of a bill of exchange wherein the signature of the drawer was forged could not be recovered by drawee—should be extended to apply to money orders. *Held*, that the United States could recover on the ground that the doctrine of *Price v. Neal*, being based on public policy, does not apply to such instruments because public policy here demands that the United States acting in its sovereign capacity be free from the negligence of its employees. *United States v. Northwestern Nat. Bank & Trust Co. of Minneapolis*, (D. C. Minn. 1940) 35 F. Supp. 484.

That money paid by mistake may be recovered is a well-accepted rule of law.[2] To this principle the courts have recognized [3] the exception first stated by Lord Mansfield in *Price v. Neal*. Chief among the reasons given to justify this doctrine are that where the equities are equal the legal title will prevail,[4] or that the drawee cannot recover because of his negligence,[5] or that the rule is one of

[1] 3 Burr. 1354, 97 Eng. Rep. 871 (1762).

[2] KEENER, QUASI-CONTRACTS 26 et seq. (1893).

[3] See cases collected, 10 L. R. A. (N. S.) 49 (1907); 12 A. L. R. 1089 (1921); 71 A. L. R. 337 (1931); 121 A. L. R. 1056 (1939). First Nat. Bank of Lisbon v. Bank of Wyndmere, 15 N. D. 299, 108 N. W. 546 (1906), rejected the doctrine, as did Pennsylvania by statute in 1849. The United States Supreme Court approved the doctrine in Bank of United States v. Bank of Georgia, 10 Wheat. (23 U. S.) 333 (1825), and has applied it to negotiable instruments issued by the United States. United States v. Bank of Metropolis, 15 Pet. (40 U. S.) 377 (1841). See cases in 10 A. L. R. 1406 (1921).

[4] Ames, "The Doctrine of Price v. Neal," 4 HARV. L. REV. 297 at 299 (1891). This view is severely criticized in KEENER, QUASI-CONTRACTS 154, note 1 (1893).

[5] WOODWARD, QUASI-CONTRACTS 129 et seq. (1913), collecting the cases.

public policy and commercial expediency.[6] The latter theory, although it may be related to circulability, is based primarily on the idea that it is commercially desirable to close the transaction upon payment of the instrument in order that the rights of the parties may be fixed and the mistakes then fall on the paying drawee. Courts have been willing to apply the rule to most negotiable instruments and usually hold that it has been written into section 62(1) of the Uniform Negotiable Instruments Law.[7] Even though writers and judges have discussed the rule of *Price v. Neal* extensively, there is almost completely lacking any consideration of its application to situations where the transactions do not concern negotiable instruments. Yet it is usually agreed that the law merchant applies to nonnegotiable instruments,[8] and it is further established that *Price v. Neal* is a part of the law merchant.[9] Logically it follows that if the instrument is one to which the law merchant will apply, it falls under the rule of *Price v. Neal*.[10] The rule is designed to protect bona fide purchasers and to aid fluidity. If an instrument not negotiable is widely used in commercial transactions, passes frequently from person to person, and is treated in the commercial world as on a par with negotiable instruments, it would seem that the transferee should be treated and protected in the same manner as the indorsee of a negotiable instrument. In the principal case the court was faced with the question whether *Price v. Neal* would apply, not to nonnegotiable instruments generally, but to money orders. Litigation involving money orders is scarce, but the few cases hold that a money order is not a negotiable instrument because there are provisions in the instrument itself and in the statute concerning money orders that refute negotiability.[11] In issuing money orders the United States is acting in its

[6] WOODWARD, QUASI-CONTRACTS 129 et seq (1913), considers the several views offered in support of the rule of Price v. Neal and concludes that the true theory of the rule is one of public policy. See also Aigler, "The Doctrine of Price v. Neal," 24 MICH. L. REV. 809 at 811 (1926).

[7] "The acceptor by accepting the instrument engages that he will pay it according to the tenor of his acceptance; and admits,—(1) The existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the instrument. . . ." Fidelity & Casualty Co. of New York v. Planenscheck, 200 Wis. 304, 227 N. W. 387 (1929), supports the majority view. Contra, South Boston Trust Co. v. Levin, 249 Mass. 45, 143 N. E. 816 (1924). See 71 A. L. R. 337 at 344 (1931).

[8] See 24 MICH. L. REV. 606 (1926). For an interesting but short history of the development of the law merchant and its diffusion into the common-law courts, see SCRUTTON, ELEMENTS OF MERCANTILE LAW 1-89 (1891). See also Goodrich, "Nonnegotiable Bills and Notes," 5 IOWA L. BULL. 65 at 72 (1920).

[9] BIGELOW, BILLS, NOTES AND CHECKS, 3d ed., 127 (1928).

[10] In United States v. Bank of New York, Nat. Banking Assn., (C. C. A. 2d, 1914) 219 F. 648 at 653, the court in dictum seems to imply that there is no doubt but that Price v. Neal would apply to nonnegotiable instruments.

[11] In United States v. Stockgrowers' Nat. Bank of Pueblo, (C. C. Colo. 1887) 30 F. 912, a federal court first held money orders not negotiable, followed in Bolognesi v. United States, (C. C. A. 2d, 1911) 189 F. 335, certiorari denied, 223 U. S. 726, 32 S. Ct. 525 (1911). In 14 Op. Atty. Gen. (U. S.) 119 at 121 (1872), it was thought that money orders were not negotiable, but that Congress intended they should have some negotiable qualities. The United States postal money order system was

sovereign capacity and not commercially, and the federal courts have held that the law merchant does not apply to such instruments.[12] It seems that the United States has relinquished no less of its sovereign capacity in cases where it issues checks in army transactions, in paying salaries, or in disbursing pension benefits than where it issues money orders; but where checks are drawn on the United States by its agents, the courts have applied the rule of *Price v. Neal*.[13] Since a money order is often used in commercial transactions in place of a cashier's check, as it can be transferred at least once,[14] and since it seems to be contemplated that a collection process will be used,[15] a money order appears to be somewhat analogous to negotiable or nonnegotiable bills of exchange.[16] Possibly the doctrine of *Price v. Neal* should apply to money orders even though they are not negotiable and even though the law merchant does not apply.[17] In view of the fact that defendant in the principal case proceeded with caution throughout the transaction, the result the court reaches seems a little harsh. Because the court took the view that *Price v. Neal* rested on public policy, there was no difficulty in reaching the result. If instead the court had taken the view that *Price v. Neal* was based on a theory of negligence [18] or of equal equities, it is possible that a different result would have been obtained.

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patterned after that of England. Aigler, "Recognition of New Types of Negotiable Instruments," 24 COL. L. REV. 563 at 578 (1924). And English courts held their government money orders were not negotiable instruments in Fine Art Society v. Union Bank of London, 17 Q. B. Div. 705 (1886).

[12] United States v. Stockgrowers' Nat. Bank of Pueblo, (C. C. Colo. 1887) 30 F. 912; Bolognesi v. United States, (C. C. A. 2d, 1911) 189 F. 335, certiorari denied, 223 U. S. 726, 32 S. Ct. 525 (1911).

[13] United States v. Bank of Metropolis, 15 Pet. (40 U. S.) 377 (1841); The Floyd Acceptances, 7 Wall. (74 U. S.) 666 (1868); Cooke v. United States, 91 U. S. 389 (1875); United States v. Bank of New York, Nat. Banking Assn., (C. C. A. 2d, 1914) 219 F. 648; United States v. Chase Nat. Bank, 252 U. S. 485, 40 S. Ct. 361 (1920); United States v. National Exchange Bank of Baltimore, Md., 270 U. S. 527, 46 S. Ct. 388 (1926). See also 10 A. L. R. 1406 (1921).

[14] A money order may be indorsed by the payee and by no one else, for if there is more than one indorsement it becomes invalid. 17 Stat. L. 298, § 112 (1872), amended slightly 18 Stat. L. 320 (1875); 39 U. S. C. (1934), § 723.

[15] It is provided on the back of a money order that bank stamps will not be deemed indorsements such as to render it invalid.

[16] Aigler, "Recognition of New Types of Negotiable Instruments," 24 COL. L. REV. 563 at 579 (1924), considers briefly the status of a money order.

[17] Originally the doctrine of Price v. Neal was an exception to a rule of quasi-contract law concerning money paid by mistake. Perhaps it could be applied to money orders as a doctrine of quasi-contract law, thus obviating the necessity for money orders falling under the law merchant. See the language of Lord Mansfield in Price v. Neal, 3 Burr. 1354, 97 Eng. Rep. 871 (1762).

[18] This raises a question as to the liability of the United States for the wrongful acts of its agents and employees, which is without the scope of this note.