Comment on Recent Decisions

BILLS AND NOTES—PRICE V. NEAL—EFFECT OF NEGLIGENCE OF CASHING BANK UPON RIGHT TO RETAIN MONEY PAID BY DRAWEE BANK.—A recent decision in Kentucky appears to have the effect of curbing a careless banking practice of cashing checks for strangers without proper identification. In the principal case a stranger, representing himself as being the payee on a check drawn on plaintiff bank, cashed it at defendant bank. There was no inquiry made as to his identity. Defendant indorsed the check and presented it through its collecting bank to plaintiff and received payment thereon. Several days later the supposed drawer discovered the forgery and repudiated the check. Plaintiff then brought suit against the defendant to recover back the money it had sent to the defendant. The decision for the plaintiff was affirmed solely on the grounds that as between banks the use of care in cashing checks is always presumed, and that defendant's negligence in this respect therefore "lulled the plaintiff bank into indifference as to the drawer's signature," thus causing the plaintiff to pay over the amount of the check without verifying the signature. *Louisa Nat. Bank v. Kentucky Nat. Bank* (Ky. 1931) 39 S. W. (2d) 497.

It is an established rule that money paid upon a mistake of facts and without consideration, may be recovered in an action for money had and received. 41 C. J. 50. An exception to this rule was announced in *Price v. Neal* (1762) 3 Burr. 1355, 97 Eng. Repr. 871, where it was held that a drawee on a bill of exchange, who had paid the amount of the bill to an innocent holder for value, and later discovered that the drawer's name had been forged, could not recover from the party to whom he had paid the money. And it was contended that the decision of that case should govern the facts of the principal case, on the ground that the drawee is bound to know his drawer's (depositor's) signature. But that case was supported strictly on the equitable doctrine that as between two persons having equal equities, one of whom must suffer, the legal title shall prevail. Both plaintiff and defendant having dealt with the bill as if it were genuine, as between the two, the holder of the money had legal title. It is true that Lord Mansfield said that the "drawee must know the signature of his drawer" and that he was negligent in not recognizing it, but it is clear that his decision was not based upon this fact, but rather that it would be "against conscience" to allow the plaintiff to recover it. To permit the negligence of plaintiff bank to be a controlling factor in the principal case, and thus to bar a recovery by it would be contrary to the established doctrine that "negligence on the part of the payor is not in general a bar to the recovery of money paid under a mistake of fact." Ames, *The Doctrine of Price v. Neal* (1891) 4 HARV. L. REV. 297, citing *Kelly v. Solari* (1841) 9 M. and W. 54, 152 Eng. Repr. 24; *Appleton Bank v. McGilvray* (1855) 4 Gray 518, 70 Mass. 518. But it is to be borne in mind that recovery was allowed in these cases strictly on equitable grounds, and as Lord Mansfield held, "If a man has actually paid what the *law* would not have compelled him to pay,

but what in *equity* and *conscience* he ought, he cannot recover it back in an action for money had and received. But where money is paid under a mistake of fact which there is no ground to claim in conscience, the party may recover it back again by this kind of action." *Bize v. Dickason* (1786) 1 T. R. 285, 99 Eng. Repr. 1097. Thus it would seem to be *inequitable* to allow the defendant (the cashing bank in the principal case) to retain the money that it had received by virtue of the confidence that one bank places in another, and to permit the defendant to take undue advantage of a situation brought about by this confidence. "It is a matter of general information that in dealings between banks and especially with reference to clearings, banks will adjust and pay differences between each other or between themselves and the clearing house *upon the faith of the indorsements by the other banks* of checks involved in such settlement, *relying on such indorsements as protecting them in such payment* should the subsequent and more careful scrutiny of the signatures disclose forgeries in the making and indorsing of the checks so paid." (Writer's italics) 3 R. C. L. 527.

To allow the doctrine of *Price v. Neal* to be brought in for the purpose of barring a recovery in a case of this kind, would upset this established banking practice and thus tend to destroy the celerity and facility with which checks are cleared. The doctrine as laid down by Lord Mansfield could hardly be applied here where the intervening considerations of present day banking practice figure so largely in the case. For cases in accord with the instant decision see, *Farmers' Nat. Bank of Augusta v. Farmers' and Traders' Bank of Maysville* (1914) 159 Ky. 141, 166 S. W. 986, L. R. A. 1915 A. 77; *Ellis and Morton v. Ohio Life Ins. and Trust Co.* (1855) 4 Ohio St. 628; cases *contra*: *Commercial and Farmers' Nat. Bank v. First Nat. Bank* (1868) 30 Md. 11; *Howard and Preston v. Miss. Valley Bank of Vicksburg* (1876) 28 La. Ann. 727, 26 Am. Rep. 105.

D. P., '33.

CONSTITUTIONAL LAW—WITNESSES—COMPULSION OVER ABSENT NATIONALS.—In *Blackmer v. United States* (1932) 52 Sup. Ct. 252, the Supreme Court affirmed the decision of the Circuit Court of Appeals of the District of Columbia holding constitutional the Walsh Act which provides for a method of compelling attendance in Federal Courts of witnesses absent in foreign countries. *Blackmer v. United States* (1931) 49 F. (2d) 523. For a comment on the decision of the Appeals Court see (1931) 17 ST. LOUIS L. REV. 85.

As did the Appeals Court, the Supreme Court held that by virtue of the obligations of citizenship, the citizen is bound by laws made applicable to him in a foreign country. *Cook v. Tait* (1924) 265 U. S. 47; *United States v. Bowman* (1922) 260 U. S. 94. Legislation of Congress is usually construed to apply only within the territorial limits of the United States, but the question of its application so far as citizens are concerned is one of construction and not of legislative power. *American Banana Co. v. United States* (1909) 213 U. S. 347; *Robertson v. Railroad Labor Board* (1925) 268 U. S. 619. The Court entertained no doubt as to the sovereign power of