

1 K.B. 795 the facts were in my opinion, indistinguishable from the present case. Vinden had a real person in his mind when he drew the cheque, although in fact the payee was not his creditor as he supposed, and had had no transaction with him giving rise to such a debt. He had been deceived by his clerk, but he intended the payee and no one else to receive the money. Warrington, J., held that the payee was not fictitious. He says (at p. 802): "It was not a mere pretence at the time he drew it. He had every reason to believe, and he did believe, that the cheques were being drawn in the ordinary course of business for the purpose of the money being paid to the persons whose names appeared on the face of those cheques." That seems to me to fit exactly the present case. . . . Kerr was a real person intended by the plaintiff, the drawer, as I have found, to be the person who should receive payment. It is a fallacy to say that Kerr was fictitious because he had no shares and had never agreed to sell any to White. The plaintiff believed he had, and intended him, and no one else, to receive the money. It seems to me that when there is a real drawer who has designated an existing person as the payee and intended that that person should be the payee, it is impossible that that payee can be fictitious. I think that the word "fictitious" implies that the name has been inserted by the person who has put it in for some dishonest purpose, without any intention that the cheque should be paid to that person only, and therefore it is that such a drawer is not permitted to say what he did not intend, viz., that the cheque shall be paid to that person only, and the only way of effecting this is to say that it shall be payable to bearer. It matters not in my opinion how much the drawer of the cheque may have been deceived, if he honestly intends that the cheque shall be paid to the person designated by him. I think Warrington, J., has not in any way misread the judgments in *Bank of England v. Vagliano*. I think his decision and mine are really founded on the principles laid down in that case."

It is difficult to reconcile *Vinden v. Hughes* and *Macbeth v. North & South Wales Bank* with *London Life v. Molsons Bank*.