

a real person, but in fact there was no such person as the named payee, and it was held that the case came within the section, and the cheque might be treated as payable to bearer.

Both the *Vagliano Case* and *Clutton v. Attenborough* were distinguished in *Vinden v. Hughes* (1905) 1 K.B. 795. In that case the drawers signed cheques at the instance of their clerk and cashier in favour of various customers to whom the drawers did not owe anything or did not owe an amount equal to that mentioned in the cheques payable to them respectively. The clerk forged the payees' endorsements, and negotiated the cheques to a holder for value in good faith who in turn obtained payment from the drawers' bankers. Warrington, J., who tried the case distinguished *Clutton v. Attenborough* because there the payee was a non-existing rather than a fictitious person. He also distinguished the *Vagliano Case* because in that case there was no drawer in fact and the use of a name as payee was a mere fiction, whereas in the case before him the drawer intended to issue the document and intended to issue it with the name of the particular payee upon it, that payee being a real person. Warrington, J., refers especially to the judgment of Lord Herschell (1891) A.C. at p. 152, as summing up the meaning of "fictitious" as applied to a real person, namely that the payee is named "by way of pretence only, without the intention that he shall be the person to receive payment."

*Vinden v. Hughes* was approved and followed in the case of *Macbeth v. North and South Wales Bank* (1906) 2 K.B. 718, decided by Bray, J. Bray, J., at p. 725, says:—"The plaintiff was told that Kerr was an engineer formerly living at Bootle, but then near Manchester. That was true. He was told that Kerr had agreed to sell the 5,000 shares to White. That was untrue, and he in fact held no shares. There had been no such transaction, but the plaintiff believed the statements made to him, and made the cheque payable to Kerr in order that he and no one else should get the money. Can Kerr, under such circumstances, be said to be a fictitious payee? I will first examine the authorities. In *Vinden v. Hughes* (1905)