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THE LAW OF BILLS AND NOTES.

FICTITIOUS OR NON-EXISTING PAYEE.

The two recent English cases of *Vinden v. Hughes* (1905) 1 K.B. 795, and *Macbeth v. North & South Wales Bank* (1906) 2 K.B. 718, raise the interesting question whether the named payee of a bill of exchange or promissory note or cheque, although he is a real person and intended by the drawer to be the payee, may nevertheless be "a fictitious or non-existing person" within the Bills of Exchange Act, if there is no real transaction with the payee upon which the bill might be based and which would justify the payee in endorsing the bill. The cases referred to answer the question in the negative, and invite a comparison with the case of *London Life Ins. Co. v. Molsons Bank* (1904) 8 O.L.R. 238, in which the contrary conclusion appears to have been reached.

The Bills of Exchange Act provides that "where the payee is a fictitious or non-existing person, the bill may be treated as payable to bearer." This provision is also applicable to notes and cheques and is contained in sub-s. 5 of s. 21 of the Act as revised in 1903 (R.S.C., c. 119), and in s. 7 both of the English Bills of Exchange Act, 1882, and of the Canadian Bills of Exchange Act, 1890.

PREVIOUS LAW:—

Before referring to the cases in which the statutory provision has been considered, it is desirable to state with precision what was the law upon the subject before the statute, and for this purpose one cannot do better than quote the words of Lord Justice Bowen in *Vagliano v. Bank of England* (1889) 23 Q.B.D. 243, beginning at page 257:—

"The law merchant seems to have been clear, and to have