

occurred where a bill by arrangement between the acceptor and the drawer was drawn and indorsed in the name of a dead man. A similar application was there made of the same principle of estoppel. Probably it was with reference to this case that the term 'non-existing' is introduced into the sub-section which we have to interpret. Down, therefore, to the date of the passing of the recent statute the exception that bills drawn to the order of a fictitious or non-existing payee might be treated as payable to bearer was based uniformly upon the law of estoppel, and applied only against the parties who at the time they became liable on the bill were cognizant of the fictitious character or of the non-existence of the supposed payee.

The principle that lies at the root of the exception is that a reasonable effect must be given in favour of bona fide holders to the act of acceptance, and that, where it appears that although there was a named payee he was so completely fictitious or non-existing that the acceptor could not have intended to restrict payment to such payee or to his order, the acceptor, who must be taken to have intended that his acceptance should have some commercial validity, was estopped from saying that the bill was not a bill payable to bearer.

CONSTRUCTION OF THE STATUTE:—

Such was the law upon the subject prior to the statute. The statute provides that "where the payee is a fictitious or non-existing person, the bill may be treated as payable to bearer." In the case from which Lord Justice Bowen's judgment has been quoted above, *Vagliano v. Bank of England* (1889) 23 Q.B.D. 243 the Court of Appeal read the statute as not extending the previous law, and held therefore that a bill might be treated as payable to bearer only as against a person who knew, when he took it, that the payee was a fictitious or non-existing person.

It was held, however, by the House of Lords in *Bank of England v. Vagliano* (1891) A.C. 107, that such a qualification of the express words of the statute could not be properly implied