

ever, went down again to be tried and again came before the House of Lords on a demurrer to evidence, and it was finally held that in an action on a bill of this sort against the acceptor to shew that he was aware that the payee was fictitious, evidence was admissible of the circumstances under which he had paid other bills to fictitious persons. Not only, therefore, is the first case of *Gibson v. Hunter*, an authority to the effect that the exceptional doctrine under discussion only applies where the acceptor knows that the payee of the bill which he is accepting is fictitious, but the whole of the subsequent litigation becomes unintelligible upon any other hypothesis.

In *Bennett v. Farnell* (1807) 1 Camp. 130, 180c. a bill of exchange made payable to a fictitious person was sued upon as a bill to bearer, but there was no evidence that the acceptor knew of the fiction. Lord Ellenborough nonsuited the plaintiff. In Lord Campbell's head-note to the case the effect of the decision is thus stated: 'A bill of exchange made payable to a fictitious person or his order is neither in effect payable to the order of the drawer nor to bearer.' But at page 180c of the addenda, there is this further note by Lord Campbell: 'In *Bennett v. Farnell*, the doctrine supposed to have been held that "a bill of exchange made payable to a fictitious person, or his order, is neither in effect payable to the order of the drawer nor to bearer" must be taken with this qualification—unless it can be shewn that the circumstance of the payee being a fictitious person was known to the acceptor. A new trial was refused in this case, because no such evidence had been offered at nisi prius. Lord Ellenborough said he conceived himself bound by *Gibson v. Minet* (1791) 1 H.Bl. 569 and the other cases on this subject which had been carried to the House of Lords (though by no means disposed to give them any extension), and that if it had appeared that the defendant knew George Abney, the payee, to be a fictitious person he should have directed the jury to find for the plaintiff.'

The above authorities relate to the case of fictitious persons. In *Asphitel v. Bryan* (1863) 5 B. & S. 723 a similar question