of the tenants in remainder, treat it as if the exchange had really taken place.

There is nothing to show that the parties really intended to effect an exchange. They were told they could not effect an exchange, and therefore they gave it up. That being so, unless it is made out that the properties, or one of them, were improperly sold at an undervalue, I cannot see what case there is for the plaintiff.

[His Lordship then discussed the evidence, which he considered failed entirely to establish that the sales were at an undervalue, and added] On these grounds I think the decision of the Vice-Chancellor was perfectly right, and the appeal must be dismissed with costs.

UNITED STATES REPORTS.

SUPREME COURT OF UNITED STATES.

The National Bank of the Republic, Plaintiff in Error v. Rees J. Millard.

Bank cheques.

Held, that the holder of a bank check cannot sue the bank for refusing payment, in the absence of proof that it was accepted by the bank, or charged against the drawer.

Mr. Justice Davis delivered the opinion of the Court.

This is an action of assumpsit brought by the defendant in error, against the National Bank of the Republic, for failing to pay a check drawn on it, in his favor, by one Lawler, a paymaster in the United States army. The declaration, in addition to the special count on the transaction, contained a general count for money had and received by the defendant to the use of the plaintiff. The only question presented by the record which it is material to notice is this: Can the holder of a bank check sue the bank for refusing payment, in the absence of proof that it was accepted by the bank, or charged against the drawer?

It is no longer an open question in this court, since the decision in the cases of *The Marine Bank The Fulton Bank*, (2 Wallace,) and of *Thompson* v. *Riggs*, (5 Wallace,) that the relation of banker and customer, in their pecuniary dealings is that of debtor and creditor. It is an important part of the business of banking to receive deposits, but when they are received, unless there are stipulations to the contrary, they belong to the bank, become part of its general funds, and can be loaned by it as other moneys. The banker is accountable for the deposits which he receives as a debtor, and he agrees to discharge these debts by honoring the checks which the depositor shall from time to time draw on him. The contract between the parties is purely a legal one, and has nothing of the nature of a trust in it. This subject was fully discussed by Lords Cottenham, Broughman, Lyndhurst and Campbell, in the case of *Foley* v. *Hill*, (2 Clark and Finnelly Reports of cases in House of Lords 1848-50, p. 28,) and they all concurred in the opinion that the relation between a banker and customer, who pays money into the bank, or to whose credit money is placed there, is the ordinary relation of debtor and creditor, and does not partake of a fiduciary character, and the great weight of American authority is to the same effect.

As checks on bankers are in constant use, and have been adopted by the commercial world generally as a substitute for other modes of payment, it is important, for the security of all parties concerned, that there should be no mistake about the status which the holder of a check sustains towards the bank on which it is drawn. It is very clear that he can sue the drawer if payment is refused, but can he also, in such a state of case, sue the bank? It is conceded, that the depositor can bring assumpsit for the breach of the contract to honor his checks, and if the holder has a similar right, then the anomaly is presented of a right of action upon one promise, for the same thing, existing in two distinct persons, at the same time. On principle, there can be no foundation for an action on the part of the holder, unless there is a privity of contract between him and the bank. How can there be such a privity when the bank owes no duty and is under no obligation to the holder? The holder takes the check on the credit of the drawer in the belief that he has funds to meet it, but in no sense can the bank be said to be connected with the transaction. If it were true that there was a privity of contract between the banker and holder when the check was given, the bank would be obliged to pay the check, although the drawer, before it was presented, had countermanded it, and although other checks, drawn after it was issued had exhausted the funds of the depositor. If such a result should follow the giving of checks, it is easy to see that bankers would be compelled to abandon altogether the business of keeping deposit accounts for their customers. If, then, the bank did not contract with the holder of the check to pay it at the time it was given, how can it be said that it owes any duty to the holder until the check is presented and accepted? The right of the depositor as was said by an eminent judge, (2 Selden, 417) is a case in action, and his check does not transfer the debt, or give a lien upon it to a third person without the assent of the depositary. This is a well established principle of law, and is sustained by the English and American decisions.—(*Chapman* v. *White*, 2 Selden, 412; *Butterworth* v. *Peck*, 5 Bosworth, 341; *Ballard* v. *Randall*, 1 Gray, 605; *Harker* v. *Anderson*, 21 Wendell, 373; *Dykers* v *Leathe*, *Manufacturing Co.*, 11 Paige 616; *National Bank* v. *Eliot Bank*, 5 Am. Law Reg., 711; Parsons on Bills and Notes, edition 1863, pages 59, 60, 61, and notes; Parke, Baron, in argument in *Bellaney* v. *Majoribanks*, 8 Eng. L. & E. p. 522-3; 4 Barnwell and Creswell, *Wharton* v. *Walker*, p. 163; *Warwick* v. *Rogers*, 5 Manning and Granger, p. 374; Byles on Bills, chapter, Check on a Banker; Grant on Banking, London edition, 1856, p. 96.)

The few cases which assert a contrary doctrine, it would serve no useful purpose to review.

Testing the case at bar by these legal rules, it is apparent that the court below, after the plaintiff closed his case, should have instructed the jury, as requested by the defendant, that the plaintiff, on the evidence submitted by him, was not entitled to recover. The defendant did not accept the check for the plaintiff, nor promise him to pay it, but, on the contrary, refused to