

court had refused as evidence, which money was placed to the credit of defendant in a New York bank, and afterwards drawn by defendant, the defendant was liable for such money.

The judgment will be reversed, and the case remanded with directions to set aside the verdict and grant a new trial; and it is

*So ordered.*

NOTE. — *Third National Bank v. National Bank*, error to the Circuit Court of the United States for the District of Colorado, was argued by *Mr. William H. Scott* for the plaintiff in error, and by *Mr. Henry M. Teller* for the defendant in error.

MR. JUSTICE MILLER delivered the opinion of the court.

The action in the present case is brought against the same defendant on indorsements of drafts precisely similar to the indorsements in *White v. National Bank*, though by a different plaintiff. There is in that case the same money count joined with special counts on the drafts, and the same evidence that the money came to the use of the defendant.

In this case, however, the parties waived a jury, and the court found no facts, but rendered a general finding for the defendant. We have had some difficulty, therefore, in disturbing the judgment, as there is no charge to the jury, and no instructions asked and refused.

A bill of exceptions, however, embodies the evidence, and shows that the court refused to receive the drafts in evidence, although the accompanying evidence of the receipt of the money by defendant, and its payment by plaintiff, was the same as in the other case. To this ruling there was an exception.

We are of opinion that the drafts, the peculiar indorsement, and the payment of the money by the plaintiff, and its receipt and use by the defendant, were each and all parts of a transaction admissible as evidence of money paid by plaintiff to the use of defendant, to be repaid on request, and that the court erred in rejecting any part of it.

The judgment will therefore be reversed for that error, and the case remanded with directions to grant a new trial.

*So ordered.*