

They deny that said Chamberlain, receiver, ever engaged Woodson, the president of the First National Bank of Sheffield, Ala., to act as his agent in the negotiation and sale of said receiver's certificates, and allege that Woodson disposed of the same without warrant or authority from Chamberlain, receiver, and contrary to the direct instructions and request of said receiver; that said certificates were not disposed of by Woodson, as alleged in the intervention, on the 10th October, 1889, to one Duncan T. Parker, or any one else, nor were they disposed of for the sum of \$5,000 each. And respondents aver that said five certificates were not disposed of by Woodson until after the 13th October, 1889, and that they were then sold, or otherwise disposed of, by Woodson, without authority, and against the express instructions of the receiver, to some person or persons unknown to respondents, and for a price not greater than 75 cents on the dollar, and also call for strict proof that said Duncan T. Parker, or any one in his behalf, ever paid to Charles D. Woodson \$5,000 for each of said certificates. And respondents aver that, if the said Parker ever bought the certificates at all from said Woodson, they were bought for a less sum than they were directed by the court to be sold for, and that the purchase of the same was against the order of the court, and against the instructions of the receiver. They further allege that the price paid for said certificates by said Parker, whatever the price may have been, was never turned over or transferred by Parker, or any one for him, to said Woodson nor to said Chamberlain, as receiver. They aver that they were not informed as to what said Parker may have done with said certificates, but deny that Parker sold and transferred said certificates to the intervener for \$5,000 each. They also deny that it was the duty of Chamberlain to pay the interest upon said certificates, or that said Chamberlain reported the sale of said certificates, Nos. 1, 2, and 3, and also Nos. 8, 9, 10, 11, and 12, for him, by said Woodson, or that the proceeds were placed to his credit in the First National Bank of Sheffield. Respondents admit, however, that said Chamberlain did report to the court that the proceeds of the five certificates in litigation had been placed by Woodson to the receiver's credit in the First National Bank of Sheffield, less commission for selling same; but respondents aver and show to the court that such statement, made by said receiver, was made through misinformation, and brought about by misrepresentation and misconduct of said Woodson; and that said receiver proceeded to correct said statement in said report so soon as he became aware of the error into which he had been led.

Respondents admit that a decree had been taken on the 3d December, 1889, as alleged in the intervention, and that it was ordered in said decree that the purchaser of the property should pay for said certificates, in addition to the amount bid at the sale of the property. And they further admit the court did on the 4th day of January, 1890, make another decree, modifying and changing the one of December 3, 1889, so as to authorize the purchaser of the property to test the validity of the said five certificates, but deny that Woodson was the agent for the receiver, or that his sale of the said certificates was binding upon the purchaser of the property. They also admit the sale of the mortgaged property on the 21st April, 1890, under the decree, as modified, authorizing the purchaser of the property to contest the validity of the five certificates.

In answer to the amended petition, substantially the same admissions and denials were made as in the answers to the original petition of intervener.

On the 6th March, 1891, an order was entered, by consent, referring the cause to a special master, who on the 3d of August, 1892, filed an extended report upon matters of fact, in substance finding as follows:

That Chamberlain, the receiver, by an order of the court, duly and regularly made, issued receiver's certificates for an amount, in the aggregate, of \$150,000. Of these certificates, five, for \$5,000 each,—Nos. 8, 9, 10, 11, and 12, inclusive,—the receiver placed in the hands of C. D. Woodson, who was at the time president of the First National Bank of Sheffield, to sell. That these five certificates are the subject of controversy in this suit, and the re-

ceiver was authorized and empowered to sell them at not less than par, less a reasonable amount to be paid for the negotiation of the same, and the proceeds to be applied to the purposes named in the decree. On October 13, 1889, Chamberlain, the receiver, sent a telegram from Atlanta, Ga., to Woodson, at Fifth Avenue Hotel, New York, in the following language: "Do not place receiver's certificates, under any circumstances, as I have given option for their sale. Also, return acceptance of ten thousand dollars to me, at Sheffield, at once. Answer here. J. G. Chamberlain." On the same day, Woodson replied to this telegram as follows: "Telegram received. Will return you the papers as requested. C. D. Woodson." In violation of the instructions contained in this telegram to him, Woodson, on October 14, 1889, sold in New York these five certificates to H. E. Garth, for D. T. Parker,—said Garth, in his testimony, says,—“either for \$17,000, or seventy cents on the dollar.” And D. T. Parker, on the 21st and 22d of October, 1889, sold them to O. H. Parker, president of the Anniston Loan & Trust Company, for said company, for \$22,500; being ninety cents on the dollar. That D. T. Parker purchased from Woodson, and paid him for, the certificates, after the receipt by Woodson of the telegram from the receiver to Woodson, directing him not to dispose of the certificates, and, in effect, countermanding any authority which might previously have been given to him to sell the certificates, but that Parker purchased and paid for the certificates in perfect good faith, relying upon Woodson's reputation for probity and honor. D. T. Parker, it appears, is dead, and also Woodson. The testimony of Garth as to the sale by Woodson to Parker is: "I have been engaged in the banking business for many years, and am now president of the Mechanics' National Bank of this city. I knew C. D. Woodson and D. T. Parker. I purchased of Mr. Woodson three certificates of the Sheffield & Birmingham Coal, Iron & Railway Company, of \$5,000 each,—Nos. 1, 2, and 3,—and shortly afterwards bought for Mr. D. T. Parker five certificates, of \$5,000 each, from Mr. Woodson. As well as I can remember, they were numbers 8, 9, 10, 11, and 12. Mr. Woodson called at my office with Nos. 1, 2, and 3, and I bought them, paying him 80 cents on the dollar for them; and in about two or three weeks afterwards he called to see me again, and I bought the five for Mr. D. T. Parker, at his (Parker's) request. I believe their numbers were 8, 9, 10, 11, and 12. I paid Mr. Woodson either 70 cents on the dollar, or \$17,000, for the five certificates of \$5,000 each. Mr. Woodson told me that the receiver of the Sheffield & Birmingham Coal, Iron & Railway Company owed his bank, and gave the certificates to him to sell. I do not know what capacity he was acting in, further than that I knew he was president of the First National Bank of Sheffield, and that he had stated that the receiver was indebted to his bank. I sold the certificates Nos. 1, 2, and 3, that I bought. Those bought for Mr. Parker were handed to him. So far as I know, the legality of the purchase of certificates Nos. 1, 2, and 3 has never been doubted or questioned. I have already stated the price, and about the time when the certificates were purchased. As nearly as I can remember, the first were bought the last of September, and the others the middle of October, 1889. So far as I know, the interest on Nos. 1, 2, and 3 has been paid regularly. I never heard to the contrary. I cannot say how long I knew Mr. Woodson before the purchase of the certificates; probably a year. He was engaged in the banking business. I heard that he had been in the banking business a number of years in Atlanta, Ga., and Sheffield, Ala. I cannot say what his standing was in banking and financial circles in the city of New York. He informed me that his bank was hard up, but was perfectly good. So far as I know, everybody regarded him as thoroughly honest and reliable." The evidence shows that the certificates were regularly sold to the Anniston Loan & Trust Company at 90 cents, and that they still own them. The first notice they had of any question as to them was when they were presented at the bank where interest was payable. It is thus shown that the intervener is a bona fide holder for value, and that the first purchase was, in like good faith, for value.

Upon the question as to whether the receiver ratified the sale by receiving the purchase price, the intervener offered the testimony of the witnesses T. L. Benham, J. R. Jones, and R. W. Austin, and the documentary evidence of