a mortgage from Charles D. Woodson to Jacob G. Chamberlain, receiver, executed October 28, 1889, on real estate in Birmingham, to secure indebtedness of $33,335, due by two notes,—one for $23,500, proceeds of receiver's certificates, and $9,835, proceeds of two acceptances,—both these notes signed, "First National Bank of Sheffield," and "C. D. Woodson;" mortgage from Charles D. Woodson to Jacob G. Chamberlain, receiver, executed November 9, 1889, on real estate in Sheffield and Colbert county, to secure same indebtedness; assignment by said bank to Chamberlain, as receiver, as further security for said indebtedness, of seven notes, aggregating $10,000, given by Henry B. Tompkins and J. M. White to said bank. The testimony of Benham, cashier, and Jones, bookkeeper, of the First National Bank of Sheffield, showed that Woodson made a deposit of money in the bank to the credit of Chamberlain, as receiver, of $17,000, on October 22, 1889; another, of $6,500, November 5, 1889,—and that Woodson said at the time that these deposits were the proceeds of the receiver's certificates. That the bank book shows these entries to the credit of Chamberlain, receiver. That Chamberlain, as receiver, had an account on the books of the bank, and had a pass book, and that these two items,—one for $17,000, and the other for $6,500,—were credited on his pass book. That Chamberlain, as receiver, had to his credit on the books of the bank, November 5, 1889, $25,278.83. That this included the item of $17,000, but not the item of $6,500. That this last item was placed on the pass book by the instance of Woodson, and that Woodson did not exactly explain the debit entry to it. That there were other deposits that Chamberlain, receiver, had made, in addition to these, between the 10th of October and the 5th of November. That he deposited $4,060.28, October 28th, and, same date, $844.45. That these were all the deposits between those dates, and no deposit afterwards. That, after the 9th of November, checks by Chamberlain, receiver, on the following dates, and for the following amounts, were honored, viz.: November 13th, $150.08; November 14th, $235.26; November 15th, $38.43; November 22d, $123.37; November 25th, $20.40; and November 26th, $31. That the receiver was overdrawn in the bank, September 19th, $7,972.50. That the receiver checked out, between October 22d and the time of the suspension of the bank, $2,859.18, and that his check out October 22d, for $576.46, was paid that day. That the deposit of $17,000 was made up of several items. The items were $6,000 and $4,000 charged to W. L. Moody & Co., of New York; $3,000 in the National Bank of Republic, transferred by him to the Burney National Bank of Birmingham, and that bank sent to the First National Bank of Sheffield $3,000 in gold, which was received, and $1,500 and $2,000 charged to the Central National Bank of New York. The total of these amounts aggregates $16,500, which, with the $500 individual check of Woodson, makes $17,000. That these several amounts were recognized and reported by the banks upon which they were drawn, and that their monthly accounts and settlements with his bank showed that these amounts were actually deposited to its credit in said banks, respectively, and that his bank got the benefit of them. That Woodson did deposit October 22, 1889, to the credit of Chamberlain, as receiver, that which was equivalent to $6,500, according to commercial usage under ordinary circumstances. That Chamberlain, as receiver, reported to the court the proceeds of these certificates as on deposit in the bank to his credit, and on December 3, 1889, the court rendered a decree of foreclosure and sale of the property for which the original bill was filed, and by that decree charged the property and its proceeds with the payment of these certificates. That at the same time the bank was insolvent. That Woodson was its president, and that, although the credit was given, part on October 22d, ($17,000,) and balance, ($6,500,) November 9th, yet at no time after the date of either credit was the bank in a condition to have paid any considerable portion of either.

These were the findings of fact by the master, but, as matters of law, he found that the receiver was, by his conduct, so far as he was concerned, estopped from denying the validity of the disposition of these certificates by Woodson, but that the entries and deposits in the bank were not equivalent to a payment by Woodson to the receiver, and that the intervener's claim was, therefore, not a valid claim, and should be disallowed.

To this report the intervener filed exceptions, specifying, under 15 heads, alleged improper rulings. Upon this the case came on, and, being fully heard, the exceptions were sustained, the decision of the special master set aside, and judgment given for the intervener for the full amount of the certificates, with interest, whereupon appellants took an appeal, assigning as error that the court erred in overruling and setting aside the special master's finding and report, and in finding that the five certificates constituted a valid claim and charge against the property, and in giving judgment for intervener.

John B. Knox, for intervener.

Henry B. Tompkins and Brickell, Semple & Gunter, for respondents.

Before LOCKE and BILLINGS, District Judges.

LOCKE, District Judge, (after stating the facts.) The nine grounds of exception assigned, upon examination, resolve themselves into but three principal questions that require examination: Was the Anniston Loan & Trust Company a bona fide holder of the $25,000 of receiver's certificates, the subject-matter of this litigation? Had they been legally disposed of, so that any title had been acquired by said company? And was the receiver—and the appellants—estopped from setting up the invalidity of said certificates? The first question is, without hesitation, answered in the affirmative. In our view of the other two questions, we deem it unnecessary to consider separately each of the grounds, as the determination of the one question, whether or not the certificates were a valid claim against the property, must include all reasons for such conclusion. Nor do we consider it necessary to examine and review the minutiae of the peculiar circumstances of the delivery and sale of the certificates, or whether or not the testimony which was introduced to show the revocation of the power given to Woodson to sell, and which was objected to, and argued at length, was admissible. It is conceded by the report of the master—in which view we agree—that, as far as the action of the receiver could do it, the sale was ratified by him; and the only question remaining is whether the proceeds ever came into the hands of the receiver, as to justify the court in recognizing the sale, and confirming the validity of the lien given by the certificates.

The principle of law, that, in order to hold the body of the trust liable for the receiver's certificates, the proceeds must come to the hands, custody, or control of the receiver, is not questioned by either party; and it is conceded that the receiver acted in perfect good faith in accepting a credit with the bank, and protecting himself and such deposit, as far as possible, by taking securities, and that he is estopped from repudiating the sale, and denying the receipt of the proceeds. The sale was not repudiated by the receiver upon his learning of it, nor does it appear that he made demand for the money, as money, when informed that the proceeds had been placed to his credit in the bank where he had been doing his banking business for a long time, to the extent of many thousand dollars, and where he still made deposits of large amounts,

and continued drawing checks, for several weeks. The embarrassment of the receiver, and the ground of claim on the part of the purchaser, so far as they have any, arise from the failure of the bank, and not from any insufficiency of deposit of proceeds. The funds were received by him precisely as they are received by the banks at the clearing house, and precisely as they are received by one depositor who is paid by the check of another depositor; that is, the receipt of the amount appropriated and placed to his credit by the bank, with his acceptance and acknowledgment. Had he received a check upon the said bank, duly certified by the cashier, and had the same placed to his credit could it have been considered more a valid payment? Levy v. Bank, 4 Dall. 234.

The amount to his credit from the sale of the certificates was in his possession and control, the same as the amount he had deposited since the sale. It is true that subsequently, when he learned that there might be a question of the solvency of the bank, he demanded and obtained from the president of the bank personal notes, mortgages, and collateral securities, to secure his deposits. But this, in our opinion, so far from tending to invalidate the sale of the certificates, was a fresh and conclusive ratification of the sale, and of the acceptance of the deposit of the proceeds. The giving of notes secured by mortgage or collaterals, by a bank, to protect a deposit, is no evidence that there has not been a money transaction, or valid credits received.

Is the court bound to recognize the estoppel of its agent, and protect the parties who have been, from the force of events subsequent to their transaction, and unforeseen by them, forced into the position occupied by the petitioners herein? The learned judge in the court below considered that it is, and with this view the peculiar circumstances of the case induce us to agree. This sale had been recognized and treated as valid and binding by both the receiver and the court until it was too late for the purchasers to protect themselves from loss. Koontz v. Bank, 16 Wall. 196; Oddie v. Bank, 45 N. Y. 735; Bank v. Burkhardt, 100 U. S. 686; From the 5th of November, when the last credit of $6,500 was given to Chamberlain on the books of the bank, until the 4th of January, neither the validity of the sale, nor the integrity of the receipt of the proceeds, were questioned. The receiver continued drawing checks against the fund thus accumulated, and the decree was drawn, presented, and signed, recognizing all as valid. The report of the sale and deposit of proceeds made to the court; the drawing, presenting, and consent to signing of the decree of foreclosure, in which the validity of these certificates was plainly and distinctly recognized,—were all done with full knowledge and understanding of the circumstances subsequently set up.

The appellants herein purchased the property subject to any liens which might be held to be valid on account of the existence of these outstanding certificates, of which they had full knowledge, and they now hold by assignment, or by buying in at foreclosure sales in suits brought by themselves, the securities which were con-

sidered, when taken, abundantly ample to protect the deposits. Under these circumstances, to permit them to successfully contest their payment, and cast the burden of any possible loss upon the innocent purchasers, who had not been informed of any error or mistake of theirs until too late to protect themselves, would, it seems to us, as expressed in the emphatic language of the learned judge in the court below, "bring discredit on the temple." We fail to find any error in the action of the circuit court, and the judgment is affirmed, with costs.

FALK v. DONALDSON et al.

(Circuit Court, S. D. New York. July 3, 1893.)

1. COPYRIGHT—PROCEEDINGS TO OBTAIN — PHOTOGRAPHS—DEPOSIT OF COPIES.
   In obtaining a copyright for a photograph, it is not necessary that the two copies required to be deposited with the librarian of congress should be mailed after publication.
2. SAME—SUBJECT OF COPYRIGHT.
   A photographist, who, by posing, and by the arrangement of lights, shades, and various accessories, produces an artistic photograph of an actress, representing his ideal of a character which she is accustomed to impersonate on the stage, is entitled to the protection of the copyright law.
3. SAME—INFRINGEMENT.
   A lithograph, which, to the eye of the ordinary observer, reproduces the material parts of a copyrighted photograph, is an infringement, although it is not an exact copy, and lacks the artistic excellence of the photograph.

In Equity. Suit by Benjamin J. Falk against Robert M. Donaldson, Charles K. Mills, and George W. Donaldson for infringement of a copyright. Decree for complainant.

Isaac N. Falk, for complainant.
Wetmore & Jenner, for defendants.

TOWNSEND, District Judge. This is a bill in equity for an injunction and accounting by reason of an alleged infringement of complainant's copyright in a photograph of the actress Julia Marlowe.

The claim that complainant neglected to comply with the statutory requirements is disproved by the evidence. It appears that on January 6, 1888, complainant caused to be sent to the librarian of congress the printed title, and on February 22d, and within 10 days of publication, he caused two finished copies to be sent to the librarian of congress. Both of these acts were duly certified to by the librarian of congress. It is not necessary that the copies should be mailed after publication; if mailed before, they are mailed within 10 days of publication. Chapman v. Ferry, 18 Fed. Rep. 541; Belford v. Scribner, 144 U. S. 505, 12 Sup. Ct. Rep. 734.

The defendants deny that the photograph represents any original, intellectual conceptions of the complainant.

The complainant is a photographist. On December 27, 1887,