fields, or from other local causes, its contributions to other roads of the series may be very large and profitable. Whether in this case the partial computation insisted upon could or could not have been made, the process was one upon which the company was neither bound nor had the right to enter.

We hold that the computation by the company for the year 1868 was made upon the proper basis, and that the complainant is concluded by it. We are of the opinion that the rents for that year, accruing under leases taken by the company after the issuing of the preferred stock, and the interest upon the sterling bonds for that year were properly paid, and that there were no net earnings earned in that year which could be properly applied in payment of preferred dividends. These views are fatal to the complainant's case. We have carefully examined all the authorities referred to by his learned counsel. None of them are in hostility to the conclusions at which we have arrived.

DECREE AFFIRMED.

SLOAN *v.* LEWIS.

1. Under the thirty-ninth section of the Bankrupt Act, enacting that a person may, in certain events, be decreed a bankrupt, against his will, "on the petition of one or more of his creditors the aggregate of whose debts provable under this act amounts to at least $250," it is not necessary that the *principal* of the debt should amount to $250. If with interest plainly due on it, according to what appears on the face of the petition, it amounts to at least $250, that authorizes the decree.
2. In a case where the decree is thus authorized, in other words, where jurisdiction exists in the District Court of the United States to decree a person a bankrupt, and the person has been decreed a bankrupt accordingly, a party against whom the assignee in bankruptcy brings suit in another court, not appellate, to recover assets of the bankrupt's estate, cannot show that payments made on account had reduced the petitioning creditor's debt so low as that the bankrupt did not owe as much as the petitioning creditor in his petition alleged. The finding of the Dis-

trict Court of the existence of a debt to the amount of $250, due from the party proceeded against to the petitioning creditor, is conclusive, in a collateral action, of the fact that a debt of that amount was due.

ERROR to the Supreme Court of North Carolina; the case being thus:

The Bankrupt Act* enacts that any person owing debts and committing certain acts,

"Shall be adjudged a bankrupt on the petition of one or more of his creditors, the aggregate of whose debts provable under this act *amounts to at least* $250."

This enactment being in force, Bell filed a petition in the District Court of the United States of North Carolina, praying that a certain Rhyne might be decreed a bankrupt. The petition alleged,

"That your petitioner's demands against the said Rhyne exceed the sum of $250, and that the nature of them is as follows."

It then set forth three sealed notes amounting in the aggregate to $249.35; and on comparing the dates of the three notes with the date when the petition in bankruptcy was filed, it appeared that several years' interest was due on them.

The "debt" therefore, using the word "debt" in its strict common-law parlance, was less than $250; though, with the interest added, it much exceeded that sum.

The debtor was, on this petition, decreed, against his will, a bankrupt, and one Lewis was appointed his assignee.

Lewis now sued one Sloan in a State court of North Carolina to set aside certain conveyances made by the bankrupt, in fraud, as was alleged, of the Bankrupt law; and one of the defences in the action was that the adjudication of bankruptcy was void, because the record showed that the debt owing to the petitioning creditor was less than $250, and consequently that the court had no jurisdiction in the premises.

* Section 39.

Argument against the assignee's right to sue.

The State court in which the suit was brought, considered that the District Court of the United States which made the adjudication in bankruptcy had, in fixing the amount of the debt, properly added the interest to the principal of the debt. In addition it refused to allow the defendant to show that the debt of $249.35 had been reduced by a credit of $64 which the creditor petitioning in bankruptcy had not allowed; a reduction, it may be noted, which was not alleged in the pleadings. Its view was that "the petition of Bell in the bankrupt court had been passed on by that court and the matter presented by it there adjudicated; and that other courts, not appellate, could not go behind the record." And fraud on the Bankrupt Act being found in the conveyances made by the bankrupt, it set them aside. This decree being affirmed by the Supreme Court of the State, the case was now brought here by Sloan, claiming under the conveyances.

Mr. H. W. Guion, for the plaintiff in error:

I. Bankrupt acts are in the nature of penal acts. By a short, sharp process they take a man's property right out of his own hands. Such statutes are to be construed strictly.

1. Now the terms "debt" and "interest" are both technical terms in the common law, each having a specific sense of its own. Those senses have never been confounded. Even in the process of the courts, mesne or final, the distinction between debt and interest is persistently preserved. In the *fi. fa.* the sheriff is commanded to make a certain debt, and also a certain other sum, as damages for the detention of said debt, and also for the costs; these damages being interest.

The rule as to interest in England, previous to 3 and 4 William IV, ch. 42, is stated by Mr. Chitty,* as follows:

"The general common-law rule is, that the law does not imply a contract on the part of the debtor to pay interest on the sum he owes, although the debt may be a fixed amount, and may

* On Contracts, 563.

Argument against the assignee's right to sue.

have been frequently demanded. Nor is interest due as a matter of right in the absence of an express stipulation, even in the case of written instruments, unless they be commercial instruments of a negotiable nature, such as bills of exchange and promissory notes."

Interest is thus but an incident to the debt, and not a part of the debt itself. But it is not the only incident, and if *it* is to be computed, why not the *other* incidents also, that at different times and in varied forms present themselves. *Ex. gr.* In the District Court of North Carolina, a petitioning creditor in bankruptcy some time since, when gold coin was forty per cent. in value above legal tender notes of the United States, set forth as his debt, a note for $200, payable in gold coin, and asserted that the amount was sufficient to confer jurisdiction, as with the then premium on gold coin his debt amounted to $280, in lawful money; and this was undeniably true. The court refused to compute this incident as a part of the petitioning creditor's debt. But if the argument of opposing counsel is right it committed, plainly, an error. Indeed, where—when you depart from a rule—are you to stop? In some States compound interest is allowed; in others but simple interest. Some notes and bills are payable in foreign currency, and might demand that the par of exchange be added. Some bills payable at different places may be protested, and the holder become entitled to damages by reason of the non-payment. All the incidents are *damages*, like interest, strictly due, and they are related to the debt, as intimately as the "interest" itself.

2. Further than all this, and as respects this particular case. The petitioning creditor in his petition fails to claim *interest* as any part of his debt, and does not pretend or aver that the proceedings are founded on such interest. In *Udall* v. *Steamship Ohio*,* this court held "that no computation of interest will be made to give jurisdiction, unless it be specially claimed in the libel." "This," it said, "would cer-

* 17 Howard, 17.

tainly be the case at law," and added that "no reason is perceived why the rule should be relaxed in case of libel."

3. Our whole Bankrupt Act is derived from the bankrupt acts of Great Britain; and when our act uses the same words which that act does, and the meaning of those words has been long settled by the judgments of the highest British courts, there is great reason why we should adhere to the interpretation so given. Those courts well deserve our respect; for the judges in them are, generally, consummate lawyers; able intellectually, and thoroughly trained in their profession. In addition to this, it is desirable, in the vast and constant commerce between the countries, that similar enactments on a subject intimately affecting both, should be similarly construed. The English act of 6 George IV, ch. 16, § 15, after presenting the form of commission reads thus:

"No such commission shall be issued unless the single *debt* of such creditor, or of two or more persons, being partners petitioning for the same, shall amount to £100 or upwards, or unless *the debt* of two creditors so petitioning shall amount to £150 or upwards, or unless *the debt* of three or more creditors so petitioning shall amount to £200 or upwards."

The older English bankrupt acts used the same expressions.

Now, so far back as 1746, Lord Hardwicke upon this word "debt" decided that interest could not be added to the principal;* and that decision has been followed steadily to this day, alike in the bankrupt court,† in the Common Pleas,‡ and in the King's Bench.§

If a question in law can become settled, this should be.

II. The point was made in the court below, that the adjudication making Rhyne a bankrupt, was not only erro-

* Ex parte Marlar and others, 1 Atkyns, 151.

† Ex parte Greenway, Buck, 412.

‡ In re Burgess, 8 Taunton, 660, S. C., 2 B. Moore, 745.

§ Cameron *v.* Smith, 2 Barnewall & Alderson, 305.

neous but void for want of jurisdiction apparent on the record, and that the question whether he was properly adjudged a bankrupt was examinable in every court where the record was produced and relied upon by the party claiming the benefit thereof. The court summarily disposed of this question by saying: "That the petition of Bell in the bankrupt court had been adjudicated by that court, and that this court could not go behind the record."

But assuredly if a court acts without authority, its judgments and orders are nullities. Now here a "debt" of a certain amount was indispensable to give jurisdiction. No such "debt" was shown. It was alleged; but the evidence of the debt, as set out on the face of the record, disproved the allegation; for the evidence consisted of three sealed notes which on their face were less than $250.

Mr. Samuel Field Phillips, contra.

The CHIEF JUSTICE delivered the opinion of the court.

The Bankrupt Act* provides for an adjudication of involuntary bankruptcy upon the petition of one or more creditors, the aggregate of whose debts provable under the act amounts to at least $250. It becomes necessary, therefore, to ascertain what constitutes a debt that may be proved. The plaintiff in error contends that it is limited to the principal of a sum of money owing, while the assignee claims that it includes the principal and all accrued interest.

To determine this question we must look in the first place to the act itself. If the intention of Congress is manifest from what there appears we need not go further. Section nineteen provides "that all debts due and payable from the bankrupt at the time of the adjudication of bankruptcy, and all debts then existing but not payable until a future day, a rebate of interest being made when no interest is payable by the terms of the contract, may be proved against the estate of the bankrupt." And again, "all demands against

* Section 39.

the bankrupt, for or on account of any goods or chattels wrongfully taken or withheld by him, may be proved and allowed as debts to the amount of the value of the property so taken or withheld, with interest."

There is certainly nothing here which in express terms excludes interest from the provable debt. On the contrary there is the strongest implication in favor of including it.

The object is to ascertain the total amount of the indebtedness of the bankrupt at the time of the commencement of the proceedings, and also the amount of this indebtedness owing to each one of the separate creditors. Accrued interest is as much a part of this indebtedness as the principal. It participates in dividends, when declared, precisely the same as the principal. One has no preference over the other, and for all the purposes of the settlement of the estate the bankrupt owes one as much as he does the other. Creditors prove their debts in order that they may participate in the management and distribution of the estate. Their influence in the management and their share on the distribution depend upon the amount of their several debts which have been proven. Hence, in order to fix the equitable representative value of a debt not due, provision is made for a rebate of interest. But if interest is to be rebated on debts not due, why not upon the same principle add it to such as are past due?

The provision for adding interest to the value of goods wrongfully taken and converted is equally significant. Certainly no good reason can be given for withholding interest in cases arising upon contract and allowing it in cases of tort, and because it is expressly given in the last and no provision is made for it in the first, the conclusion is irresistible that it was expected to follow the contract as a part of the obligation.

We are all, therefore, clearly of the opinion that accrued interest constitutes part of a debt provable against the estate of the bankrupt, and if it does it is necessarily part of a debt which may be used to uphold involuntary proceedings. It is only necessary, upon this point of jurisdiction, that the

petitioning creditors should have owing to them from the debtor they wish to pursue, debts provable under the act to the required amount. The English cases referred to in the argument, in our opinion, have no application here. They are founded upon the English statutes and the established practice under them. Our statute is different in its provisions and requires, as we think, a different practice.

This is conclusive of the case. The petition filed in the bankrupt proceedings distinctly averred that the debts due the petitioner exceeded the sum of $250; and, if interest is added, the particular indebtedness specified amounts to more than that sum. The court found this allegation true. That finding is conclusive in a collateral action. We have so decided in *Michaels* v. *Post*,* at the present term. Where the record shows jurisdiction, an adjudication of bankruptcy can only be assailed by a direct proceeding in a competent court. Evidence, therefore, to show that payments had been made which reduced the indebtedness below the required amount was inadmissible under any form of pleading in an action like this, but it was especially so in this case, because there is no averment in the pleadings contradicting the record. The sole objection is that upon the face of the record the error is apparent. A record cannot be impeached without previous notice by proper form of pleading.

JUDGMENT AFFIRMED.

IN RE CHILES.

1. In the original decree in the case of *Texas* v. *White & Chiles* (7 Wallace, 700), the defendants were perpetually enjoined from setting up any claim or title to any of the bonds, or coupons attached to them, which were the subject-matter of the suit. The bill, answers, and proceedings in the case show that the purpose of the suit was to establish the title of the State to these bonds, and to free it from the embarrassment of the claim of defendants.

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* 21 Wallace, 398.