

in his own right in fee simple. There is no allegation that the testator was not in possession—seised in fact. The defendant's exceptions are overruled.

The court awarded the plaintiff \$957 as damages, and the plaintiff excepted. The general exception to the verdict raises no question which can be determined here. It does not appear that the court was requested to make any ruling of law as to the assessment of damages, or to report his finding of facts in relation thereto (P. S., c. 204, ss. 9, 10, 11), or that any motion was made to set the verdict aside as against the law or the evidence. If such motion can be made here, the facts are insufficient to determine it. The only facts appearing—that the premises in question are part of the land on both sides of the Androscoggin river purchased by Marble, the plaintiff's grantor, for \$10,000, and that the land from which the plaintiff was evicted was essential to the use of a water-power on the premises, and the undisputed evidence that the water-power constituted one half in value of lands purchased for \$10,000—do not establish the value of the lands of which the plaintiff was evicted to be \$5,000, even if it should be found that the water-power was worth that sum. It is to be presumed the land upon the opposite side of the river and the flowage were also essential to the use of the water-power. If all together constituting the water privilege should be found of the value claimed, it is clear each of the parts making up the whole cannot equal in value the whole. As the case stands, the plaintiff's exception must be overruled. The parties do not disagree as to the rule of damages, and the case presents no occasion for its consideration.

Exceptions overruled.

BINGHAM, J., did not sit: the others concurred.

Strafford, }
June 30, 1903. }

ROBERTS, *Trustee*, v. FERNALD, *Adm'r.*

In an action brought in a state court by a trustee in bankruptcy for the recovery of the debtor's property, evidence other than the records of the federal court is inadmissible to prove that the claims of petitioning creditors were insufficient in amount to warrant an adjudication of bankruptcy. In such action, evidence that the defendant had no notice of the pendency of the bankruptcy proceeding, and that his name did not appear in the list of creditors filed therein, is immaterial and properly excluded.

ASSUMPSIT, to recover money collected in fraud of the bankruptcy act. Facts found, and case transferred from the February term, 1903, of the superior court, by *Young, J.*

August 16, 1901, the defendant brought an action against Mathes Brothers, attached property therein, recovered judgment upon default, levied upon the property attached, and had the execution returned as satisfied,—all prior to December 1, 1901. The records of the United States district court for the District of New Hampshire show that Mathes Brothers “were duly adjudged” bankrupts, under the United States bankruptcy act, January 2, 1902, upon a creditors’ petition filed December 2, 1901, and that the plaintiff was appointed trustee of their estate. Upon these facts a verdict was found for the plaintiff, subject to the defendant’s exception.

The defendant offered to prove that the claims of the petitioning creditors in the bankruptcy proceeding did not amount in the aggregate to \$500, that he did not have notice of the pendency of the proceeding, and that his name did not appear in the list of creditors filed therein. The evidence was excluded, subject to exception.

William F. Nason and *William H. Roberts*, for the plaintiff.

Arthur G. Whittemore and *Frank F. Fernald*, for the defendant.

CILASE, J. The only questions discussed by the defendant in his brief are those arising upon the exception to the exclusion of the evidence offered by him, and no other question has been considered. The evident purpose of this evidence was to show that the United States district court had no jurisdiction to adjudicate Mathes Brothers bankrupts and appoint a trustee of their estate, so far, at least, as the defendant is concerned.

The defendant’s first proposition is that the action of the district court is absolutely void, because the petitioning creditors in that court did not hold provable claims against the alleged bankrupts amounting in the aggregate to \$500 or more in excess of the value of securities held by them, as required by section 59, subdivision 3, of the bankruptcy act of 1898. 30 U. S. Stat., c. 541. If it appeared from the records of the court that the claims of the petitioning creditors amounted to a less sum than \$500, the defendant’s proposition might be tenable. Although the district courts of the United States are courts of general jurisdiction as to many matters, special and summary powers in relation to bankruptcy are conferred upon them by statute; and so far as such proceedings are concerned, they have been regarded by courts of high character like courts of special and limited

powers, whose jurisdiction will not be presumed in other courts, but must appear from their records to entitle their decrees to recognition. *Morse v. Presby*, 25 N. H. 299; *Horn v. Thompson*, 31 N. H. 562, 571; *Farnam v. Davis*, 32 N. H. 302, 309; *Eaton v. Badger*, 33 N. H. 228, 237; *Haywood v. Charlestown*, 34 N. H. 23, 26; *Carleton v. Insurance Co.*, 35 N. H. 162, 167. But the defendant's offer was not of evidence tending to prove that the records of the district court show an inadequacy of claims, but of evidence tending to prove the fact independently of the records and probably in conflict with them. By the forms prescribed by the United States supreme court, under the authority of section 30 of the bankruptcy act, the petition should allege that the petitioners have provable claims of the requisite amount, and the nature and amount of each claim should be stated. The allegations of the petition must be verified by the oaths of the petitioners. 172 U. S. 681; 30 U. S. Stat., c. 541, s. 18c. The case states that the records of the district court show that Mathes Brothers "were duly adjudged" bankrupts. The question was not raised that this record was insufficient to prove jurisdiction. If it is insufficient,—if the record of the petition, its service, and other proceedings prior to the adjudication should have been put in evidence,—the defendant is not in a position to avail himself of the fact; he should have objected to the evidence on this ground at the trial, when the defect could be, and probably would have been, remedied. As the case is presented here, it must be taken for granted that the records show that the claims of the petitioning creditors were sufficient in amount to give the court jurisdiction of the subject-matter, and that the district court so adjudged. This being so, the adjudication cannot be attacked in this action. If the record is not true, the adjudication may be voidable, but it is not absolutely void, and the defendant must look to the district court for relief, if he would avoid its consequences. *State v. Kennedy*, 65 N. H. 247; *Small v. Benfield*, 66 N. H. 206; *Pendexter v. Cate*, 66 N. H. 270; *Spaulding v. Groton*, 68 N. H. 77.

The defendant also says the proceedings of the district court were void as to him because he had no notice of their pendency, and his name did not appear in the list of creditors filed therein. The bankruptcy act does not require notice to be given to creditors of the pendency of a creditors' petition against an alleged bankrupt for an adjudication in bankruptcy. The notice is to be given to the defendant (the alleged bankrupt) in person, or, if this cannot be done, by publication. 30 U. S. Stat., c. 541, ss. 18a, 58. Other creditors may join in the petition after it has been filed, or may appear and oppose the granting of it. *Ib.*, ss. 18b, 59f. It is made the duty of the judge to make an adju-

dication of bankruptcy, or to dismiss the petition, without delay, after the issues are formed or the time for forming them has elapsed. *Ib.*, ss. 18d, 18e. The court having jurisdiction of the subject-matter (*Ib.*, s. 2) and of the alleged bankrupt by the service of notice upon him as required by the act, its decree of adjudication binds him and all persons claiming any interest in the estate through him. Creditors are not deprived of their property by the adjudication without due process of law within the meaning of the United States constitution, because they have no personal notice of the proceeding. *Hanover Nat'l Bank v. Moyses*, 186 U. S. 181, 190. A creditor who has had no notice of the petition cannot attack the decree of adjudication, provided the records show that the proceedings were according to law. So far as the adjudication is concerned, he is privy in estate with the defendant in the action, and is bound by the adjudication equally with the defendant.

In the proceedings for the settlement of the estate after the adjudication, provision is made for giving creditors notice of the steps to be taken which will affect their interests. The bankrupt is required to file a list of the creditors, verified by his oath, within five (now ten) days after the adjudication, unless further time is granted; and if he fails to do it, the duty is placed upon the referee in bankruptcy. 30 U. S. Stat., ss. 18b, 39. In involuntary proceedings, the names of creditors first appear in this list. The first meeting of creditors is the one called for the appointment of a trustee or trustees, etc. *Ib.*, ss. 44, 55. Notice of the meeting is given to the creditors by mail ten days before the meeting, and also by publication. *Ib.*, s. 58a, b. Debts that have not been scheduled in time for proof and allowance, with the name of the creditor if known by the bankrupt, are not affected by the bankrupt's discharge, unless the creditor had actual notice or actual knowledge of the proceedings. *Ib.*, s. 17. While, under these provisions, the debt of the defendant in this action may not be discharged by the bankrupt's discharge, unless the defendant had actual knowledge of the bankruptcy proceedings, the adjudication of bankruptcy is binding upon the defendant, and carries with it all incidental results. *Morse v. Presby*, 25 N. II. 299, 304, 305. Among these results is the right given to the trustee in bankruptcy to take possession of the bankrupt's estate and to recover property and money of persons into whose possession it has passed in violation of the bankruptcy act. The fact that the defendant's name did not appear upon the list of creditors, and that he had no notice of the bankruptcy proceeding, would not affect the court's jurisdiction in respect to the adjudication of bankruptcy, nor the title of the plaintiff to maintain this action;

and consequently the evidence offered in support of the fact was immaterial and rightly excluded.

Exceptions overruled.

All concurred.

Strafford, }
June 30, 1903. }

DEMERRIT *et al.*, Trustees, v. YOUNG *et al.*

Obscure and doubtful language in a will is to be so construed as to carry out the testator's general purpose, although standing alone it may be susceptible of a different meaning.

Where a will directs the expenditure of so much of the income of a trust fund as "may be actually necessary for the comfort and support" of a son of the testator, the trustees cannot give him the immediate benefit of the income, or pay it to him except as his necessities and comfort demand; and whatever is not required for this purpose and for expenses of the trust must, upon the decease of the beneficiary, be paid to the remaindermen as part of the principal of the estate.

BILL IN EQUITY, for the construction of the will of Emerson Furber. Facts agreed. Transferred from the February term, 1903, of the superior court by *Young, J.*

The plaintiffs are the trustees named in the will, who now hold the estate in that capacity. Mary Furber, the widow of the testator, died in November, 1901, and Ann Leighton, his daughter, died in March, 1901. Frank, his son, is now living, but is, and has been since a time long before the testator's death, *non compos mentis*. His mental incapacity is permanent and incurable, and was known by the testator to be so when he made his will. The defendant Leighton, at the death of the testator, was the sole survivor of his nephews and nieces. The will provides as follows:

"Second. . I give, bequeath, and devise unto my beloved wife, for and during only the term of her natural life, the one third part of all my estate, both personal and real, wherever found or however situated; at the decease of my beloved wife, the aforesaid estate is hereby bequeathed and devised to Joseph L. Demeritt and Eli Meader, in trust for the support and all necessary expenses, in sickness and health, at all times and under all circumstances, for the welfare and comfort of my two children, Ann Leighton