its the jurisdiction to the judge, and takes it away from the referee; that section 12 defines exclusively the mode by which, and the terms upon which, a composition may be confirmed; and that section 13 defines exclusively the grounds upon which it may be set aside. Similarly, section 2 (12) gives the court of bankruptcy jurisdiction concerning discharge; section 38 (4) limits this jurisdiction to the judge; section 14 defines exclusively the conditions under which a discharge may be granted; and section 15 defines exclusively the conditions under which it may be revoked. The strongest case in support of the petitioners' contention which I have been able to find is In re Dupee, 2 Low. 18, Fed. Cas. No. 4,183, but that case was decided under the act of 1867, which, in this respect, differed totally from that of 1898. Perhaps a case may be imagined, not within the terms of section 13 of the latter act, where this court would have jurisdiction to vacate its decree of confirmation improvidently rendered; but, plainly, congress did not contemplate that a composition should be set aside on the ground that a creditor had failed to get notice of the proceedings because his address was misstated in the bankrupt's schedule by mistake. Petition dismissed.

In re STEVENSON et al.

(District Court, E. D. North Carolina. April 22, 1899.)

1. BANKRUPTCY—EXEMPTIONS—FOLLOWING STATE DECISIONS.
   On the question of the right of the individual members of a bankrupt firm to have set apart to them, out of the partnership assets, the exemptions allowed by the law of the state, the federal courts, sitting in bankruptcy, will follow the rule established by the decisions of the highest court of the state.
2. SAME—PARTNERSHIP ASSETS.
   In North Carolina, in case of the bankruptcy of a partnership, where there are firm assets but no individual estate, each partner is entitled to receive, out of the partnership assets, the exemption allowed by the law of the state, provided the other partner consents thereto; and the fact that the petition in bankruptcy is signed by both partners is conclusive evidence of such consent mutually given.

In Bankruptcy. In the voluntary bankruptcy of the firm of Stevenson & King, each of the partners claimed to have set apart to him, out of the partnership assets (there being no individual assets), the personal property exemption allowed by Const. N. C. art. 10, § 1. The referee in bankruptcy, on a hearing, decided in favor of the claim of the bankrupts, and, on exceptions by certain creditors, this decision was certified to the court for review.

J. H. Pou, for bankrupts.

R. C. Strong, for creditors.

PURNELL, District Judge. The bankrupts were partners and had no personal property, except a stock of goods owned by the partnership firm. The only question contested and argued was whether both partners are entitled to the personal property exemptions out of the

firm assets. The act of congress of July 1, 1898, entitled an "Act to establish a uniform system of bankruptcy" (section 6), provides:

"This act shall not affect the allowance to bankrupts of the exemptions which are prescribed by the state laws in force at the time of the filing of the petition in the state wherein they have had their domicile for the six months, or the greater portion thereof, immediately preceding the filing of the petition."

In addition to the general rule that federal courts will follow the decisions of the highest court of the state in construing their own statutes, this section makes it obligatory on the court of bankruptcy to follow such decisions in regard to exemptions. It contemplates that the bankruptcy law shall not affect the exemptions as allowed under the state law and construed by the courts of the state. Hence the state decisions are paramount in cases like the one at bar. The constitution of North Carolina (section 1, art. 10) provides:

"The personal property of any resident of this state, to the value of five hundred dollars, to be selected by such resident, shall be, and is hereby exempted from sale under execution, or other final process of any court, issued for the collection of any debt."

This section of the constitution has been frequently before the supreme court of the state, and it seems to be the settled law of the state that partners having no other property than the firm assets each is entitled to the personal property exemptions out of such property, provided the other partner or partners consent. State v. Kenan, 94 N. C. 296; Burns v. Harris, 67 N. C. 140. In the first case cited it was urged upon the court to reverse this ruling, as in variance with the decisions of many other states; but the court, after discussing the decisions of other states, adhered to the former ruling, and it seems to be the settled law in North Carolina.

The petition in bankruptcy, signed by both the partners, is written evidence under oath of a consent previously given, if it is not a consent per se, that each partner shall have the personal property exemptions allowed by the constitution and laws of North Carolina, as construed by the supreme court. A denial of the personal property exemptions, where there is even doubt about the consent, is upon the ground that each has the right to have his separate estate exonerated from debt as far as possible by the partnership assets, not because of any lien or legal right inherent in a creditor. In bankruptcy, the discharge exonerates the estates of each partner, if the petition is joint and several. Whether the consent, therefore, would be of as much importance in bankruptcy as in a proceeding in a state court, may be doubted; but the law as decided by the supreme court is as stated above, and the bankruptcy court must abide thereby, not because it should be, but because it is, so. The decisions cited to the contrary do not apply, for one at least makes an exception where the forfeiture is by bankruptcy, and the law of 1898 expressly provides that the exemption shall not be affected. I must therefore hold that this is conclusive evidence of a consent, and that both partners are entitled to the personal property exemptions out of the firm assets. The decision of the referee herein is affirmed.

In re SMITH.

(District Court, W. D. Texas, El Paso Division. April 25, 1899.)

No. 7.

1. BANKRUPTCY—REVIEW OF DECISION OF REFEREE.
   Under General Order No. 27 (18 Sup. Ct. viii.), in bankruptcy, the decision of the referee on a contest between the bankrupt and one of his creditors cannot be certified to the judge for review when the referee's finding is not followed by any order made by him, and the exceptant does not file a petition setting forth the error alleged to have been committed by the referee.
2. SAME—CONTEST AS TO EXEMPTIONS.
   The question of the status of a particular chattel claimed by the bankrupt as exempt, and by a creditor as assets of the estate, cannot properly come before the court for determination until a trustee has been appointed, and has made his report of the articles set apart by him as exempt. Exceptions to the trustee's action may then be heard by the referee, and certified by him to the judge for final determination.
3. SAME—APPOINTMENT OF TRUSTEE—AFTER-DISCOVERED ASSETS.
   In a case of voluntary bankruptcy, where no trustee was appointed, for the reason that the schedule showed no assets, and no creditors attended the first meeting, if the referee afterwards learns that property of the bankrupt has been found, which creditors claim as assets of the estate, a trustee should then be appointed, according to General Order No. 15 (18 Sup. Ct. vi.).

In Bankruptcy. On review of finding of referee.

Frank E. Hunter, for bankrupt.
Z. B. Clardy, for contesting creditor.

MAXEY, District Judge. Richard F. Burges, Esq., one of the referees in bankruptcy, has submitted the following certificate for the consideration of the judge:

"I, Richard F. Burges, one of the referees of said court in bankruptcy, do hereby certify that in the course of the proceedings in said cause before me, the following question arose pertinent to the said proceedings: Is a diamond, of the value of two or three hundred dollars, which is set as a shirt stud, and is habitually worn as such, exempt to a bankrupt under the statute of Texas, which exempts 'all wearing apparel'? Art. 2397, Rev. Stat. Tex. 1895. An agreed statement of all the evidence pertinent to this issue which was adduced upon the hearing thereof is hereto attached, and marked 'Exhibit A,' and made a part hereof. And the referee, after hearing all the evidence, and the authorities submitted, and argument made by counsel for both parties, to wit, the Edgewood Distilling Co., contestant, and Phillip Smith, bankrupt, held that such diamond was not exempt. Whereupon Phillip Smith, bankrupt, by his counsel, excepted to said ruling of the referee. And the said question is certified to the judge for his opinion thereon."

After a careful examination of the proceedings in this case, the court feels constrained to return the record to the referee, with instructions for further proceedings. Bankruptcy Act, § 2, cl. 10. If the referee predicated his certificate upon rule 27 (18 Sup. Ct. viii.), it does not appear that in the proceeding before him any order was made upon his finding; nor does the record contain a petition filed by the bankrupt, setting out any error committed by the referee. If it was the purpose of the Edgewood Distilling Company, whose claim was proved