of an exemption. But in this case T. W. Grimes appears to have been an equal partner with E. E. Grimes, and hence entitled to the exemptions claimed. Allen v. Grissom, 90 N. C. 90; McMillen v. Williams, 109 N. C. 256, 13 S. E. 764; Richardson v Redd, 118 N. C. 678, 24 S. E. 420. The finding of the referee as to this exception is approved.

It was further insisted that E. E. Grimes was not entitled to the exemption claimed, as he was not a resident of this state when the petition in bankruptcy was filed by Grimes Bros. The burden of showing a change of domicile, when it becomes material to do so, "unquestionably lies on the party who asserts the change." 5 Am. & Eng. Enc. Law, 865. It is presumed that the residence of a person continues to be in the place where it is proved to have been until the contrary is shown. 17 Am. & Eng. Enc. Law, 76; Fulton v. Roberts, 113 N. C. 428, 18 S. E. 510; Chitty v. Chitty, 118 N. C. 648, 24 S. E. 517. The term "domicile," used in the bankruptcy act of 1898, is a broader term than the term "residence." From the evidence it appears that E. E. Grimes was born and raised in this state; that he at one time lived and voted in Winston, and paid taxes there; that he has never voted in any other state, and is now a traveling salesman for a Winston tobacco house. There is certainly no evidence that he ever acquired a residence outside of North Carolina. The finding of the referee as to this exception is approved.

SELLERS et al. v. BELL.

(Circuit Court of Appeals, Fifth Circuit. May 31, 1899.)

No. 818.

1. BANKRUPTCY—DISCHARGE—KEEPING BOOKS OF ACCOUNT.
   The bankrupt's omission to keep books of account cannot be made a ground of opposition to his discharge, when it appears that, since a time more than three years prior to the passage of the bankruptcy act, he has not been engaged in any business to which the keeping of books would be necessary or appropriate.
2. SAME—SCHEDULES—JUDGMENT—DEBT.
   Where a judgment previously recovered against the bankrupt still appears on the records of the court, which rendered it as an unsatisfied obligation against him in favor of the judgment creditor, it is rightly included in the bankrupt's schedule as a debt due to that creditor, although it has actually been sold to another creditor, and the bankrupt is chargeable with knowledge of the sale.
3. SAME—MONEY BORROWED FOR ATTORNEY'S FEE.
   Where a proposed voluntary bankrupt, who has no property except such as is exempt, borrows $50, wherewith to pay the fees and costs of his attorney, just before filing his petition, he is not required to list the amount so borrowed in his schedule of assets, and his omission to do so is no ground of opposition to his discharge.
4. SAME—EXEMPT PROPERTY—WEARING APPAREL.
   Under Code Ala. § 2037, exempting from execution personal property to the amount of $1,000, and, in addition thereto, "all necessary and proper wearing apparel," a watch may be included in the term "wearing apparel"; and consequently, where the schedule of a voluntary bankrupt disclosed no assets except as appeared in the item "personal wearing apparel, $100,"

which he claimed as exempt, he is not guilty of making a false oath to such schedule, so as to bar his discharge, although it is shown that he owned a gold watch worth $50, which he habitually wore, and which he intended to include in the item mentioned.

5. SAME—CLAIM AGAINST BANKRUPT'S WIFE.

Where a husband, being at the time in business and enjoying good credit, advanced to his wife a sum of money to enable her to complete a purchase of realty for her own benefit, but took no note for the amount, and made no entry or memorandum of the loan, and never asked for repayment, and, being subsequently adjudged bankrupt, testified that his wife owed him the money, but that he did not exact it of her, *held*, that his omission to include this claim in his schedule of property would not bar his right to a discharge in bankruptcy, especially as the money, if repaid, would be claimable by the bankrupt as part of his statutory exemption, except as against a single creditor holding a note with waiver of exemption.

6. SAME—FILING FEES—POVERTY AFFIDAVIT.

A voluntary bankrupt, whose petition is accompanied by an affidavit that he is without and cannot obtain the money necessary to pay the filing fees, cannot subsequently be required to pay such fees out of any property set apart to him as exempt, or out of money earned by him after the filing of the petition.

7. SAME.

A proposed voluntary bankrupt, who has not money enough to pay the filing fees, is not required to solicit gifts or loans from his friends for that purpose; and he is not guilty of a false oath in making affidavit that he "cannot obtain" the requisite sum, although it appears that friends would have advanced him the amount if requested.

Appeal from the District Court of the United States for the Middle District of Alabama.

Willis V. Bell, the appellee, resides in Montgomery county, Ala. Having caused to be prepared a petition to the court of bankruptcy praying for the benefit of the bankrupt act, to be adjudged a voluntary bankrupt, and to have a discharge from all his debts provable under the act, on September 8th he made affidavit before a notary public to this petition and to Schedules A and B attached thereto, and to a statement in writing "that he is a poor man; that he is not possessed of sufficient means and is not actually able to pay the deposit of twenty-five ($25) dollars for court costs in the above-entitled cause." On the same day these papers were submitted to the clerk of the court of bankruptcy by the appellee's attorneys, Reese & Sternfeld. The clerk declined to receive and file them, because the affidavit did not state that he could not obtain the money. On being advised of this (at his home), he went to Montgomery, and, with his consent, there was added, to the affidavit that he had made of inability to pay costs, the words, "And that he cannot obtain the money with which to pay said fees." Thereupon, on September 12th, the clerk filed the papers, and the cause duly proceeded. Schedule A showed the names of 21 creditors whose claims were in judgment, aggregating in amount $41,341.42, and 15 creditors who had not sued their claims to judgment, whose claims aggregated in amount $4,435.31. Schedule B, omitting the signature and affidavit thereto, was as follows:

"Schedule B.

"Statement of all real and personal estate and effects whatever of Willis V. Bell, with his claim of exemptions of personal property and effects excepted from the operation of said act by the provisions of section —— thereof: Real estate, none; personal wearing apparel, $100,—which said personal property is claimed as exempt from levy and sale under execution or other process for the collection of debts, under section 2037 of Code of Alabama 1896, and which is excepted from the operation of the act of July 1, 1898, by the provisions of section —— thereof."

On the same day that these papers were filed the petitioner was adjudged to be a voluntary bankrupt.

At the first meeting of creditors, held October 5th, the appellants appeared before the referee by counsel. Only the appellants had then or have ever proved their debts against this bankrupt, and hence they alone, of the numerous creditors, appeared at that meeting or at any subsequent stage of these proceedings in bankruptcy. On October 5th the appellee also appeared before the referee, and was cross-examined by counsel for the appellants. The referee's report of that examination is as follows: "At Montgomery, October 5, 1898. Willis V. Bell, the bankrupt, being duly sworn, deposes and says: I stay at Ada. My wife and children are living at Ada. I am 46 years old. I am superintending a farm for N. J. Bell and a commissary store for him. We have never had a definite understanding about salary. I was to have a living. That understanding has been in vogue since December, 1894. Contract verbal, and not in writing. We have had no settlement. N. J. Bell looks over his books about twice a year. This understanding includes a living for my family as well as myself. Nothing said about spending money. I get money, besides my living and clothes, to pay tuition for the children and the doctor's bill. I have a pass on the Midland Railroad, and don't pay fare. I go to see my father once a year, and pay my fare on the Louisville & Nashville Railroad. My wife has some money, and I get it from her every time I want it, if she has it. I cannot tell always where I get the money from. Sometimes I sell an old suit of clothes, and get four or five dollars. My wife has some money,—a steady income. It don't amount to much this year. The rents amount to about 24 bales for the year. She had some of the property when we married,—about $400 or $500. She got a place that she bought in 1891. I think she paid about $1,400 for it. I believe that was all she had. She had got one place she bought since then for $2,000, paying $1,000 cash and $1,000 on time, secured by a mortgage which is now held by my brother N. J. Bell. She has two or three little places. She has 80 acres of land she paid $100 for, and another 80 she paid $300 for. She owns the following named places: The Webster place, that she paid $1,400 for; the place called the Woodson place, for which she paid $100; then she has another tract called the Giddins place. I think she paid $300 for that. She has the Moseley place, for which she paid $2,000, as stated above. She derives all her income from these places, except some houses and lots in Ramer and 40 acres of land near Ramer. She had a storehouse there, but I moved it away. She has three dwelling houses and lots there. I reckon they are worth about $300 apiece. The store lot is worth about $50. Two of them are not rented now. Two of them, when last rented, rented for $4. The other rented for $5 a month. One was rented up to August last. The other rented a while last spring. We got $50 a year for the 40 acres of land near Ramer up to this year. This year we got $40. I married in 1890. My wife has one place—the Webster place—that she has been getting $250 to $350 a year for. She accumulated the money, and I kept it for her mostly. We usually kept it about the house, sometimes in the wardrobe. She bought the Webster place in the summer of 1891. We did not get the rent that year. I bought it from —— Webster, who lives at La Pine. I paid $1,400 for it,—$500 cash and the balance in the fall. My wife had $500 or $600, and I let her have some in the fall of 1890 or 1891,—at the time the purchase was made,—and some when the final payment was made. To the best of my recollection I let her have as much as $500 at the time the last payment was made. She had the lots at Ramer when we were married. My wife bought the $2,000 plantation about two years ago, since I failed. We bought from a man named Laird, of Colburg. My wife had the money. She got it from rents of her places. She has never paid me back the money I loaned her. I never loaned her any other money. I took no note for the money I loaned her, and made no entry on any book, and made no other memorandum of it, and I do not keep any books between my wife and myself. I never asked her to pay it back to me. You might say that she owes it. She really owes it; but I do not exact it of her. The arrangement I have with N. J. Bell includes my living and living for my family, and amounts to between $600 and $800. My brother limits me to an expense account of not over $800. I get a little money on that account, and charge it to myself. The largest amount I recollect getting under this arrangement from the store was $75 or $100,—not over $100. I have been in the mercantile and farming business

a long time. I failed and went out of business in 1894. The arrangement went into effect in January, 1895, and has been in effect ever since. When I failed, N. J. Bell took all the property on hand at that time, and none of my other creditors got anything. I put down in my schedule personal wearing apparel at $100, comprising all my estate. I have a gold watch worth $50, and had it at the time I made out the schedule. I had no other property. The most of my accounts on hand when I failed were secured by mortgage, and have been transferred to N. J. Bell. I know there are some accounts on my old books due and uncollected. They are all out of date and barred by statute of limitations. Q. You have stated these accounts are barred by statutes of limitations; do you know how long it takes for the statute of limitations to bar an account? A. I think it takes three years to bar an account stated. Q. How long does it take to bar an open account? A. About two years I think. I have kept no books since I suspended business in the fall of 1894. I had a diamond stud which could be worn as a ring. I gave it to my wife when we were married. I gave $150 for it. I made the affidavit of inability to pay court fees [shown here, the same being the one now on file]. I think the affidavit was as it now is when I swore to it. There was some change made in the affidavit as originally prepared; but the changes were made with my knowledge, approval, and assent, and the affidavit, as it now stands, was sworn to by me. The only man I talked to about getting the money to pay for this bankruptcy proceeding was my brother, N. J. Bell, and he asked me, 'What's it going to cost?' I told him I did not know, but would see a lawyer and find out. He told me, if it cost over $50 or $75, he advised me not to have anything to do with it. After I filed the pauper's oath, Mr. Bernard Frank came to me and said it was too bad; that he and several of my friends would have let me have money, if I had come to them. I did not say anything to N. J. Bell about letting me have this $25 deposit fee after I had decided to go into bankruptcy. I did not ask my wife to let me have the $25 to make this deposit fee. I never asked anybody to let me have it. I borrowed from Freeman Rushton fifty dollars just before I made the affidavit of inability to pay court costs, and had $35 of it at the time I first made the oath. Between that time and the time the oath was changed I paid my attorneys $25, and I think I paid to my attorneys the other $10 for advertising or costs, or something of that kind. The balance of the fifty dollars, to wit, fifteen dollars, I might have bought goods for myself and family with. Still have two or three dollars at this time. [Signed] W. V. Bell."

On February 7, 1899, the bankrupt presented his petition for discharge, which is as follows: "W. V. Bell, of Ada, in the county of Montgomery and state of Alabama, in said district, respectfully represents that on the 12th day of September last past he was duly adjudged bankrupt under the acts of congress relating to bankruptcy; that he has duly surrendered all his property and rights of property, and has fully complied with all the requirements of said acts and orders of the court touching his bankruptcy. Wherefore he prays that he may be decreed by the court to have a full discharge from all debts provable against his estate under said bankrupt acts, except such debts as are excepted by law from such discharge."

On February 15th the judge of the court of bankruptcy made the following order: "For good and sufficient reasons shown, it is ordered that the affidavit of inability to pay filing fees of the petitioner filed herein, with the petition herein, be stricken from the file in this case, and that the petitioner be, and he is hereby, permitted to withdraw said affidavit."

On the 18th the appellants Sellers & Orum filed the following: "Sellers & Orum, of Montgomery, in the county of Montgomery and state of Alabama, parties interested in the estate of said W. V. Bell, bankrupt, do hereby oppose the granting to him of a discharge from his debts, and for the grounds of such opposition do file the following specifications: (1) That said W. V. Bell did knowingly, willfully, and fraudulently not attach a full, true, and correct schedule of all his property to his petition to be adjudged a bankrupt. (2) That the schedule of his property which W. V. Bell attached to his petition to be adjudged a bankrupt is willfully and knowingly false and untrue, in that it does not contain a debt of about $600 which was due from the said Bell's wife to him. (3) That said schedule of his property attached by said Bell to his peti-

tion is willfully and knowingly false and untrue, in that the said Bell does not include in said schedule a gold watch worth about $50, which his testimony shows he owned at the time said petition was filed. (4) That said schedule of his property attached by said Bell to his petition is willfully and knowingly false and untrue, in that said Bell had at the time of filing said petition a sum of money, to wit, $50 or other sum, as shown by his testimony on his examination, which said Bell has never turned over to the trustee in this proceeding. (5) That said W. V. Bell willfully and knowingly swore falsely when he made the pauper's oath to the petition, swearing that he did not have, and could not obtain, money to deposit as costs and fees. (6) That the said W. V. Bell willfully and knowingly swore falsely when he made the pauper's oath to the petition, swearing that he did not have, and could not obtain, money to deposit as costs and fees, in that he had $50 or other large sum when he made said affidavit. (7) Because said Bell willfully and fraudulently has not turned over any property to the trustee in this proceeding. (8) That the said Bell willfully and knowingly negligently failed to keep, for several years prior to filing said petition, any books of account or other books showing his assets and liabilities, so that the same might be ascertained in this bankruptcy proceeding. (9) That the laws of Alabama do not allow the said W. V. Bell any exemptions of personal property against the debt of this creditor, and that the said Bell has willfully and knowingly failed to turn over to the trustee the property set out in the schedule attached to his petition in this cause or the other property he owned, as shown by his own testimony in this case. (10) These creditors are informed and believe, and upon such information and belief state, that the list of creditors filed by said Bell is willfully and knowingly incorrect and false in this: that D. M. Snow & Co. appears as a creditor for the sum of eleven hundred one and $^{96}/_{100}$ dollars, when, at the time said petition was filed, said D. M. Snow & Co. was not a creditor of said Bell. (11) These creditors are informed and believe, and upon such information and belief state, that the said Bell paid D. M. Snow & Co. in full, or compromised their claim and settled it in full, before he filed his petition in this cause, and that D. M. Snow & Co. were not creditors, and the list of creditors returned by said Bell with his petition is willfully and knowingly untrue and incorrect."

After the filing of the foregoing, Sellers & Orum added to the specification of the grounds of their objection to the discharge that "the said Bell, before he filed his petition in bankruptcy in this court, and in contemplation of the filing of said petition, offered to petitioners (creditors), and stated to them, that he intended to file his petition in bankruptcy, but that he intended to pay them what he had paid other creditors, notwithstanding he got discharged from their debts." At the same time and by the same counsel the appellants W. B. Jones and Ray filed identically the same objections, except specification 9, not applicable to their case, as their judgment was not on a waive obligation.

At the instance of the appellants, a second examination of the bankrupt and an examination of other witnesses was had by and before the referee on the 1st and 2d days of March. From the report of that examination we make these excerpts: "Q. (by the appellants' counsel). I believe that you testified on your former examination that you had $50 in your pocket. A. No, sir; I do not think I did. Q. Well, how much did you have on your person? A. I do not know how much I had at the time when the change was made in the paper. I did not have $50. I might have had two or three dollars. I do not remember. Q. Did you have $25? A. I did not have $25. Q. When you first submitted the affidavit to the clerk, did you have any money in your pocket? A. I think I just had a little change. Q. When you submitted the affidavit to the clerk the second time, did you have any money in your pocket? A. I do not think I had." From the testimony of John A. Sellers: "Mr. Bell never offered me at any time anything not to oppose his discharge." From the testimony of W. B. Jones: "I have had no conversation with W. V. Bell since he went into bankruptcy. He never made me any offer, or offered me any inducement not to oppose his discharge." From the testimony of the clerk, questioned by the attorney for the appellee: "Q. Did any one pay the fees, what is known as the primary or original cost fees, for filing the petition in bankruptcy in the matter of W. V. Bell? A. I think, Mr. Wilkinson, you paid the fees yourself. Q. How was it done, by check or in money? A. My recol-