

MCALISTER *v.* ROBINS.

Opinion delivered November 6, 1911.

1. JUSTICE OF THE PEACE—APPEAL—REQUISITES.—An appeal from a justice of the peace will not be dismissed, where the party appealing filed the statutory affidavit for appeal, though the transcript on appeal failed to show that an appeal had been granted by the justice of the peace. (Page 542.)
2. EXEMPTIONS—DEBTOR'S RESIDENCE.—As the question of residence is largely one of intention, a debtor who is preparing to remove from the State may still be a resident of the State and entitled to her exemptions. (Page 542.)

Appeal from Benton Circuit Court; *J. S. Maples*, Judge; affirmed.

*Rice & Dickson*, for appellant.

1. The record does not show that the affidavit for appeal was filed or that an appeal was granted. 7 Ark. 203; *Id.* 469.

2. The court erred in admitting appellee's testimony to the effect that she had been sued, attachment issued, and judgment rendered against her sustaining the attachment, etc. If such testimony was admissible, then it was error to allow the schedule. 43 Ark. 43; 51 Ark. 87.

3. The evidence shows that appellee was a nonresident of the State, and not entitled to claim exemptions. "One is a nonresident within the meaning of the attachment laws though still within the State, when, with a fixed intent to leave it and his residence therein, he begins to remove to another State with intent there to reside." 86 Am. St. Rep. 29.

Appellee, *pro se*.

1. The circuit court had jurisdiction. There was a substantial, if not a literal, compliance with the statute in the matter of the affidavit for appeal. Its delivery to the justice of the peace was a filing. Kirby's Dig., § § 4666, 4672, 4671; 21 Ark. 578-580.

2. Appellee had not lost her citizenship, and right to claim exemptions. 70 Ill. 120; 8 Ky. Law Rep. 781; 10 S. W. 131.

MCCULLOCH, C. J. Appellants sued appellee before a justice of the peace in Benton County on account for debt, and caused an order of general attachment to be issued and levied on household goods owned by appellee, who appeared and filed a schedule of her property, claiming the attached property to be exempt from seizure. The justice of the peace refused to allow the claim of exemption, and appellee prayed an appeal to the circuit court, and within the time prescribed by statute filed affidavit and bond for appeal. A transcript of the proceedings was filed in the circuit court, and appellant moved to dismiss on the ground that the transcript failed to show that an appeal had been granted by the justice of the peace. The motion was overruled, and the court, after hearing the mat-

ter on the schedule and oral testimony, allowed the claim of exemptions and ordered supersedeas.

The motion to dismiss was properly overruled, for appellee did all that was required in order to obtain an appeal by filing the statutory affidavit, and she was entitled to an appeal as a matter of right. *Wynn v. Garland*, 11 Ark. 302; *Rapley v. Brown*, 12 Ark. 80; *Townsend v. Timmons*, 44 Ark. 482.

The statute provides that an appeal shall not be dismissed for omissions or informalities in the docket of a justice, but that the court may, by rule or attachment, require the justice to correct the same or to allow an appeal where he has failed to do so upon the filing of the affidavit. Kirby's Digest, § § 4673, 4674 and 4675.

The question of residence is largely one of intention, as manifested by acts and circumstances. And, notwithstanding appellee was preparing to remove from the State, the court was warranted in finding from the evidence that she was still a resident of the State and entitled to exemptions. *Savage v. Gazola*, 80 Ark. 249; *Gebhart v. Merchant*, 84 Ark. 359. Merely an intention to remove from the State, or even preparations to leave, do not deprive a person of the right to exemptions. *Winslow v. Benedict*, 70 Ill. 120; *Herzfield v. Beasley*, 106 Ala. 447; *Anthony, A. C. & Co. v. Wade*, 1 Bush (Ky.) 110; *Stirman v. Smith*, 8 Ky. Law Rep. 781; *Bonnell v. Dunn*, 28 N. J. Law 153; *Stafford v. Mills*, 57 N. J. Law 570; *Ballinger v. Lantier*, 15 Kan. 608; *Woods v. Bresnahan*, 63 Mich. 641; *Grimstad v. Lofgren*, 105 Minn. 286, 17 L. R. A. (N. S.) 910.

In many of the cases cited above the facts were that the debtor had declared his intention to remove from the State and had packed his household goods and delivered them at the railroad station for shipment out of the State, but it was held that the right to claim exemptions as a resident of the State had not been lost.

Appellee did not waive her right to claim exemptions by failing to appeal from the judgment of the justice sustaining the attachment, but she preserved her rights by appealing from the judgment denying the exemptions.

Judgment affirmed.