

that the approach of the train to the crossing cannot be seen until the traveller is upon the track, one who has driven upon the track with due care, and looked for the train as soon as looking could be of service, will not be deemed guilty of negligence in not first stopping his team to ascertain if a train might be approaching. If in such case the traveller is killed or injured by a collision with the cars upon such crossing, the company will be deemed guilty of negligence, and held answerable therefor.—*Mackay v. Railroad Co.*, A. L. Reg. 413.

**SALE OF CHATTELS — DELIVERY.** — The ostensible nature and purpose of a change of possession, as well as its duration, should be considered in determining whether it was so manifest and substantial as to be unprejudiced by a return of the property to the control and possession of the original owner. 39 Vert. Rep.

In March, R. delivered all his assets, including two waggons, to H., to enable H. to realize out of their avails the payment of certain debts. H. sells part of them, and applies on his debts. In June, therefore, he allows the waggons to return to R.'s possession, although the debts were not fully paid, H. believing that he could not lose any rights by so doing. *Held*, that the waggons, after their return to R.'s hands, and while in his possession, are attachable as R.'s property. (*Id.*)

The attachment would not be less valid because H. had been previously summoned as R.'s trustee on account of these waggons at the suit of the creditor who makes the attachment; nor would its validity be altered by H.'s having become responsible for the debt, unless R. was also discharged. (*Id.*)

*Property exempted from execution—Sale of, by debtor.*—The owner of property which is exempt from execution in Kentucky has the right to sell such property at his pleasure, and such sale passes the absolute title to the purchaser, without rendering the property liable to execution for the debts of the owner. (*Anthony v. Wade*, Ct. of Appeals of Ky.)

Such a sale is no fraud upon the creditors of the owners of the property, because the property gave no delusive credit to the owner, the law of exemption being sufficient notice to all creditors that the property was not subject to their demands. (*Id.*)

The exemption laws of Kentucky were passed for the benefit of the families of housekeepers; and a man who is in good faith a housekeeper in one county in Kentucky, does not lose that character by removing with his family and carrying exempted property from one county to another in this State. (*Id.*)

He does not lose his character as a housekeeper by "packing up" his goods for the purpose of removing with his family, and carrying the exempted property from Kentucky to the State of Tennessee. (*Id.*)

Property which is exempted from execution because the owner is a housekeeper, is also exempt from seizure under execution while *in transitu* from one county to another; also while *in transitu* from Kentucky to Tennessee. (*Id.*)—A. L. Reg. 438.

## UPPER CANADA REPORTS.

### CHANCERY.

(Reported by S. G. Wood, Esq., Barrister-at-Law.)

#### IN RE DILLON'S TRUSTS.

*New Trustees—Two appointed in place of one—Vesting order—Imp. Stat. 13, 14 Vic. cap. 60—C. S. U. C. cap. 12, s. 28—Practice.*

Where it becomes necessary to apply to the Court for the appointment of a new trustee, it is only under very special circumstances that the Court will be satisfied with one; therefore

Where the trustee appointed by a will had died, and he who was named by the testator to succeed him was out of the jurisdiction, and shown to be an unsuitable person to act in the trust, the Court appointed, in substitution for him, a *cestui que trust* under the will, whom the testator had named as a trustee thereof under certain contingencies which had not occurred; but under the circumstances, directed another to be associated with him, although the will provided for one trustee only acting in the trust at one time.

[Chancery, Feb. 18, 25, April 8, 1867.]

This was a petition presented *ex parte* on behalf of the *cestuis que trustent* under the will of the late G. G. Dillon, setting out the will of the deceased, whereby, after devising his real and personal estates to J. G. Bowes, in fee, to be held by him in trust for the *cestuis que trustent* therein named (being the petitioners and J. Dillon, jun.) the testator directed as follows: "Provided also that in case my said trustee shall die, or become unable from any cause to act, then I will and direct and hereby appoint John Hall to be the trustee of this my will, in the place of the said J. G. Bowes; and in case the said John Hall shall die, or refuse to accept the said appointment, in such case I nominate and appoint my father to act in this behalf; and failing either, then I request the said J. G. Bowes, John Hall, my father, or either of them, to name some trustee to act in the matter of this my will; and failing this, I desire my brother John to act as my trustee in this behalf; hereby vesting in such one trustee as shall consent to act all the trust estates, moneys and premises, which shall be then vested in the trustee so dying or refusing or becoming incapable to act as aforesaid."

The petition further alleged the death of Mr. Bowes, the departure from Canada of Mr. Hall, his residence out of the jurisdiction, and other circumstances which rendered it desirable that a new trustee should be appointed, and prayed that John Dillon, jun., the testator's brother, named in the will, should be appointed trustee thereof, and that the trust property might vest