NOTIFYING A DECEASED ENDORSER

A leading Canadian textbook on "Mortgages" says that in case the party who gave the mortgage is dead a foreclosure notice should be sent to his "present" address—an evident misprint for "former." A bright student noticed the mistake, and in a copy of the book in a certain Toronto law library this query is pencilled in the margin: "Where in h— will you find him?"

Deceased mortgagors, however, are not the only parties requiring notice—deceased endorsers of promissory notes and bills of exchange, for instance, and the Canadian Bills of Exchange Act provides that notice of dishonour must be given "in the case of death, if known to the party giving the notice, of the drawer or endorser, to a personal representative, if such there is and with the exercise of reasonable diligence he can be found," while in a majority of the United States the so-called Negotiable Instruments Act is practically identical,providing as it does that "when any party is dead and his death is known to the party giving notice, the notice must be given to a personal representative if there be one, and if with reasonable diligence he can be found, if there be no personal representative, notice may be sent to the last residence or last place of business of the deceased."

In this connection the case of the Second National Bank vs. William E. R. Smith, recently decided by the New Jersey Court of Appeals, is one of some interest to Canadian readers as it was decided under the clause of the Negotiable Instruments Act quoted above, which, as has been pointed ed out, corresponds with the Canadian law on the same point.

In this case it appeared that one William Runkle had endorsed a note made by Harry G. Runkle, which was discounted by the Second National Bank and the proceeds paid to Harry G. Runkle.

William Runkle had made a Will appointing William E. R. Smith as his executor and died on January 31st, 1914, before the note fell due.

Harry G. Runkle then attacked the validity of the will, and the matter was fought out in the courts for over two years, and finally, in July, 1916, the will was upheld and letters testamentary were granted William E. R. Smith, the executor named in the will.

In the meantime, on April 27th, 1914, the note fell due, and in order to hold William Runkle's estate as endorser, it was necessary for the Second National Bank to protest the note and give the proper notice of dishonour, and the note was handed to a Notary Public for that purpose.

The Notary duly presented the note to the teller of the Second National Bank, who informed him that there were "no funds". The Notary then interviewed the assistant cashier, who told the Notary that William Runkle was dead, and in answer to an enquiry from the Notary, the assistant cashier further informed him that William E. R. Smith, 20 Broad Street, New York City, was the Executor of Runkle's will, and the Notary then mailed the notice of dishonour to "William Runkle, c/o William E. R. Smith, 20 Broad Street, New York City."

The Second National Bank then sued William E. R. Smith as executor of the Estate of William Runkle and Smith set up the defence that, under the circumstances, mailing the notice as set out above was not sufficient proof of "reasonable diligence," that the notice was insufficient, and the endorser therefore discharged of liability.

The New Jersey Court of Appeals held, however, that the information received by the Notary from the assistant cashier, and the sending of the notice as set out above, was sufficient evidence of reasonable diligence as required by law, and that the estate was, consequently, liable.

"Where a Notary makes enquiry at the bank where the paper is payable, and receives information from the cashier as to the residence of the endorser, upon faith of which the Notary addresses the notice of protest, the jury are justified in finding that he has used due diligence," said the New Jersey Court. "And inquiry at the bank where the paper is payable is just as efficacious in ascertaining death and the existence of an executor or other personal representative, as it is with regard to the residence of an endorser."

In another case along the same line the Massachusetts Supreme Court has laid down the same rule in the following words:

"Where an executor has been named in a will, as he is the person to whom the testator has confided the administration of his estate, such notice may also be properly given to him, and it may fairly be expected that the benefit to be anticipated will be, at least, as great as if it were left at the last residence or place of business of the testator. It is true that such a person may never be actually appointed executor by the probate court, or that he may renounce the trust but, as the only object of leaving the notice at the last residence is that the facts therein stated may come to the knowledge of those whose duty it is to protect the estate, it is not to be expected that any person can ordinarily be found there, upon whom this duty will rest more strongly than upon one who is named as executor in the will."