RIGHTS AND DUTIES OF TRUSTEES.

Mr. Marshall Freeman, Barrister-at law, recently gave a lecture to members of the Chartered Institute of Secretaries at Birmingham, England, on "The Rights and Duties of Trustees and Executors."

Proceeding to outline his subject, the lecturer explained what was implied by the different titles of "executor," "administrator," and "trustee," pointing out that a trusteeship for practical purposes came into operation at a later stage than the other offices. The executor is liable to the extent of the assets which come into his hands for all contracts made by deceased; but he is not liable for torts committed by deceased, nor can he sue for torts committed against the deceased, except they be torts affecting the estate and torts arising under Lord Campbell's Act. Thus, if somebody had, for example, thrown vitriol over the deceased, his executor could not sue for personal injury, but he could sue for the damage done to the clothing of deceased. Another point in which the position and responsibilities of an executor needed to be clearly understood arose when a deceased testator left a business behind. If his executor chooses to carry on that business he becomes personally liable; but supposing the testator left directions that his business was to be carried on, then the executor is entitled to recoup himself out of the assets of the business, and to that end he may avail himself of the right of retainer—that is to say he may prefer his own claim to the claims of other creditors of the same grade. An executor is always liable for squandering the assets of the estate, and similarly for wilful default (*e. g.* failing to get in accounts which he might have collected, or to realise other assets which ought properly to be realised). Then, if he does anything which amounts to an admission of assets—for instance, if he pays interest on a legacy from time to time, or pays legacy duty—he will be estopped from disputing the fact of being in possession of assets to the amount indicated in such admission. Cases had been known in which executors had employed moneys of the testator in their business, and by entry of the amount so employed in the books of the business had been held to have admitted possession of the same. Dealing with the rights of executors and trustees as contrasted with their duties and liabilities, Mr. Marshall Freeman pointed out that whereas at one time an executor had no control over real property unless the testator had directed the sale or charge at certain dates, now, under the Land Transfer Act of 1897, both an executor and an admmistrator had complete control over the testator's real property. The executor in exercising the right of retainer already referred to, could only apply that principle to simple contract debts, but not use it to further any specialty debt; curious as it might seem at first, he could retain assets to cover a debt due to himself even though that debt was barred by the Statute of Limitations, but not if it was one barred by the Statute of Frauds—the reason being that he could, as executor, pay the former to another creditor if he thought fit, but he could not rightfully pay the latter. An administrator only possesses the right of retainer where he can claim as next of kin. Finally, he would recommend everyone concerned to have in mind the fact that there existed such a person as the Public Trustee, whose department, although its methods might be open to criticism on minor matters, yet offered a guarantee of prudence and integrity.

The lecture was followed by an interesting discussion, during which a number of questions were put and answered; and the proceedings terminated by votes of thanks to the lecturer and the Chairman.

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 case of death, if known to the party giving 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 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 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.