SHALL I BE A TRUSTEE?

BY A BARRISTER-AT-LAW.

PUNCH'S advice to those about to marry might well be applied to those who are in doubt whether or no to become trustees. But in the present state of society trusts are a necessary evil, and there are few men, and not perhaps many women, who are not obliged, at least once in a lifetime, to accept this onerous and thankless office. A certain eminent conveyancer, a great authority on the law of trusts, it is true, consistently refused during the whole of a long life to be a trustee; but there are few people, probably, who are so hard-headed and hard-hearted as to imitate his example. It is therefore not very helpful to answer this question with a mere "Don't." It is needless to go into detail as to the circumstances in which the duty becomes almost obligatory. Death-bed requests cannot be heedlessly refused, and ties of kindred and friendship have responsibilities of their own. It should, however, at the same time be borne in mind, both by those who require and those who are asked to become trustees, that it would be impossible to ask or to confer a greater favour.

If the task is one which, from its nature, cannot be lightly declined, still less should it be lightly undertaken. Common sense would, it might be thought, sufficiently inculcate this obvious truism; but common sense, it must be admitted, is often conspicuously absent in trust transactions of the highest importance to all concerned. The history of trusts is one huge monument of human folly. Trustees often complain of the hardships they have to endure; but if these are examined, they will be found to be due, in nearly every case, to their own stupidity and their own negligence. It is scarcely conceivable, for example, that trustees should commonly be totally ignorant, not only of their powers and duties, but of the details of the trust property. Yet this is a fact which is every day finding fresh illustration. Cases by hundreds have come before the Courts in which a trust has been managed, not by the trustees, but by their solicitors or agents, with results which might have been foretold.

At the outset, then, we may warn all those who are, or who may be, trustees, that unless they are prepared to understand and to discharge the duties of the office, they would do far better to refuse to undertake it altogether.

Any man or woman may be a trustee, and any man or woman may, therefore, have to ask themselves the question which stands at the head of the present article. The law now imposes practically no inability upon any class of subjects. Even married women and "infants"—*i.e.*, persons under full age—can be trustees. It is true that the Court will appoint another trustee to act in behalf of a minor in a trust of real property during his minority; but nevertheless it is, broadly speaking, true that even infants are capable of being trustees. It may, however, be added that it is in all cases most improper for them to accept the office. Young unmarried women should, too, under no circumstances either be asked or consent to become trustees. They cannot behave as if they were free agents in a matter of this kind. A change of condition—always, of course, more or less imminent—may, and probably will, bring with it duties and responsibilities not compatible with those which attach to trusteeship. In the same way, there are few married women who are justified in accepting the post, except in very special circumstances. Widows, however, may properly become trustees if they feel themselves to be capable of properly managing the affairs of the trust. To sum up, then, it may be laid down as a general rule that the only persons who possess a sufficient sanction for refusing to act on these grounds, in all cases without exception, are (1) legal infants of both sexes, (2) unmarried women, and (3) married women.

As to the qualities desirable in a trustee we need say nothing. We are not now concerned with the question of choosing trustees or founding trusts—often, if not always, a matter of peculiar difficulty and intricacy; it is enough to say that next, of course, to integrity, the one fundamental characteristic to be desired is business capacity.

To be candid—any man or woman who does not possess a general acquaintance with business transactions would do a very foolish thing in undertaking to manage trust property. They would, moreover, expose themselves to very serious risk, for they might, from sheer ignorance or inadvertence, omit or commit acts which a Court of Equity would judge with extreme severity. The one leading rule which has governed a whole class of cases is that "a trustee is only required to use customary care and diligence: that which is usually exercised by men of ordinary prudence and vigilance in the management of their own affairs." As we shall have occasion to point out, there are sundry qualifications of this rule. It is commonly said that "a trustee is liable only for gross negligence." But in many matters the Court requires extreme circumspection. This is, however, seldom expected to be greater than a prudent man would devote to the care of his own property, and this leads to the obvious truism that a trustee should be a "prudent man." Those who are engaged in speculation in any form, or those whose avocations expose them to risk of sudden changes of position, do not, of course, come within this category. We have no desire to impute wholesale a want of integrity to this, it is to be feared, very numerous class; but neither their habits nor their rules of conduct fit them to act as trustees.

Trustees may naturally be divided into two great classes: that is, (1) trustees of realty, and (2) trustees of personalty. Of these, the former have by far the more onerous duty to discharge. The trustee of "realty"—*i.e.*, lands or house property—is required, without fee or reward, unless this is specially authorised by the instrument creating the trust, to manage them as a careful owner would be expected to do. Every detail connected with the property has to come under his personal care, and it is only within limits which are very narrow and strict that he can delegate any of his duties to agents.

It is needless to particularise as to the ruling of the Courts in this respect. It is enough to say that, unless expressly empowered to do so, no trustee has any authority to charge the trust income with agency expenses. There is a well-known decision of the House of Lords which has, within the last few years, extended this principle, and laid it down distinctly that trustees are bound to transact personally many parts of the routine business of the trust, and are, as we have said, not to be allowed to employ solicitors or agents to do this for them. In consequence of this decision, large amounts of expenses have been disallowed on taxation, and these would, of course, be payable by the trustees personally. In some cases, it is true, there is no difficulty, the will or deed creating the trust vesting the discretion as to the manner in which the business is to be done absolutely in the trustees. But it is, nevertheless, important that the point should be borne in mind. In a case which happened quite recently, for example, it was decided that trustees could not give authority to solicitors to receive the purchase-money of an estate sold in the ordinary course, but should have either attended in person to receive the money, or have had it paid into a bank to the trust account. From this it will be seen that the position of a trustee of a large estate may be intolerably irksome and arduous. It is no exaggeration to say that he may have to devote almost the whole of his time to its management. It is superfluous to add that these considerations are well worthy the attention of any one who has occasion to ask himself the question, "Shall I be a Trustee?"

The position of a trustee of lands in other respects depends very much upon the nature of the property, and the terms of the trust. If there is a tenant for life, it is, of course, much lighter than where the trustee is in possession, since it is then practically limited to the duty of seeing that the timber is not cut down and sold, that the mansion house is kept in a proper state of repair, and, in short, that the life-tenant does not commit "waste." But in all other cases a trustee has to manage the property exactly as if he were a careful owner, and nowadays that is a sufficiently arduous task.

There is another matter which should be mentioned here, although it is a detail. It is imperative that the trustee should keep all the title-deeds in his own possession, or lodged in a bank in his name. It is most improper for these to be in the control of any third person, and this practice, which is still far too common, has been the cause of much real hardship. The Courts almost invariably hold trustees responsible for the acts of their agents, and it is not sufficient to show that due care has been shown in appointing these. If the agents commit any fraudulent act, the trustees themselves are personally liable, except in some few cases, such as brokers and bankers employed in the ordinary course.

The same rules apply, of course, to the management of personal property. The trustee must look after it himself, and not be content to leave its administration to others. As to the degree of care which he is required to exercise, much depends upon the circumstances of each particular case: broadly speaking, where the investments are specified he has little to do but to receive and distribute the interest or dividend. But it is not always enough for him to do this. Sundry classes of property are regarded by the Courts as wasting property, and, except under special circumstances, it is the duty of a trustee to dispose of these before they deteriorate in value. Indeed, unless due diligence be shown in this respect, the Court would certainly declare him to be personally liable for any loss that may have been occasioned. We cannot, of course, attempt to enumerate the different classes of property which come within this dangerous category, and it would be unsafe to generalise. A couple of illustrations must suffice.

Mortgages and shares in companies are always risky investments, and it may at any moment be the duty of trustees to sell. Again, as an eminent judge once declared, it ought to be "rung in the ears of every trustee" that he must not invest on personal security, and indeed even when expressly empowered to do so, it is often hazardous.

There are however, fortunately, sundry classes of investments which are always safe, and these are known as "Trustees' Securities." Their scope is constantly being widened either by statute or the practice of the Courts. We may name some of them. Three per Cent. Consolidated or Reduced or New Bank Annuities, Bank of England or Ireland Stock, East India Stock, Exchequer Bills, Metropolitan Board of Works Consolidated Stock, mortgage of freeholds or copyholds (which must not exceed more than two-thirds of the value in the case of agricultural property, nor more than one-half of the value of house property, disregarding, of course, all fortuitous circumstances), are all Trustees' Securities. The terms of the instrument creating the trust of course affect these investments as well as others, but where these are in general terms trustees must act with great circumspection. It is thus one of the many curious incidents of trusts that trustees who seem to possess a very wide discretion are more strictly limited as regards investments than in cases where the investments are more or less expressly specified. In the same way, trustees cannot rely upon the terms of their instrument exonerating them from liability. Even an indemnity clause declaring that they shall not be liable for the insufficiency of any security will not protect them if the security is palpably inadequate. It cannot, moreover, be too carefully borne in mind that where there are two or more trustees it is

the duty of each to see that the property is duly secured and rightly applied. If by the act, direction, agreement, or consent of one of them the trust fund is paid over to the other who wastes or misapplies it, each is responsible for the whole. This proposition might be qualified, but it is safer to state it bluntly.

It is a common practice for trustees to agree that one shall have the exclusive management of one part of the trust property, and the other trustee of the other part; but although this is often a proper and almost a necessary arrangement, it should be remembered that each will be liable for any loss which may happen in either part. The reason for this rule of equity is that the party not acting was in default in giving the other the power and exposing him to the temptation to commit a breach of trust, instead of exercising that control over the property which it was his duty to exercise.

A detail which affords a useful illustration of the wise policy of Courts of Equity in guarding against a breach of trust by prohibiting all acts which may unnecessarily place the trustee in a situation of temptation, is the regulation requiring a trustee who places money in the hands of a banker to take care to keep it separate from his own money. Indeed, if he were to mix it in a common account, he would be deemed to have treated the whole as his own, and would be charged with interest, and held liable for any loss sustained by the banker's insolvency. This is obviously a wholesome proviso. Any looseness in transactions of this kind might lead to loss of trust property even without any design to commit a breach of trust. But within certain limits it may be taken as a general rule that all trustees who act as a careful and prudent owner would act, and according to the common usage of mankind, will not be made answerable for losses.

Trusteeship often brings with it, as a necessary consequence, guardianship, with its manifold anxieties, and it is obviously desirable that all these contingencies should be taken into account before the office is accepted. It may, however, be added that the direction of the Court can now be very cheaply and expeditiously obtained upon any doubtful point, and in this way the position of a trustee has, by recent changes in procedure, been made much less anxious. Still, as we have shown, trusteeship is, and must always be, a very onerous duty, and there is much in the project of establishing a Public Trustee which deserves the support of the public.

In the meantime, however, it is to be feared that many people will find themselves reluctantly obliged to return an affirmative answer to the question, "Shall I be a Trustee?" and to such these few observations may be useful.

OUR NEW HOUSE AND ITS PLENISHINGS.

BY THE AUTHOR OF "HOW I FURNISHED FOR ONE HUNDRED POUNDS," ETC.

PART I.

SUGGESTION FOR AN EMBROIDERED PANEL—GOLD ON BLUE.

IT is wonderful to think how quickly the time has flown since the days when we began life in our little villa home and spent our precious hundred pounds in decorating and furnishing it. My readers will perhaps remember the account of our adventures at that time. I don't think I can ever take such pride in any house as I did in that one! You see, it was the first; I had never had a place of my own before. There was a novelty about it, and a rosy light shone upon those home-made tables and chairs which will never be seen upon any others, however beautiful they may be. No other house can have the same associations; but it grew crowded after a time, and noisy too, and so, as our income had increased, we felt that the time had come to move; and now we are actually settled in a new house, and once again have been absorbed in the complicated questions of papering and painting. It is a fascinating occupation—a fascination which is perhaps exaggerated by comparison with the dreary round of house-hunting which has so lately been our lot. Oh, that house-hunting! how hopeless it was, how full of regrets and of unpleasant surprises! I have come to the conclusion that ignorance on sanitary matters is bliss while knowledge seems fraught with woe. Of course it was right to refuse it, but my heart still yearns over that old-fashioned red-brick mansion with its walled gardens, and long low rooms with broad window-seats, and high-panelled hall, and black oak staircase. I would have taken it without a question had we not engaged an architect to survey all the houses for us. He was considered very clever, and was certainly most matter-of-fact.

I believe he had a private spite against all the artistic houses. His report of that one was brief but very dreadful. I give it in his own words, as it may tell others what to avoid in taking a house.

"Waste-pipe of bath untrapped and passing into soil-pipe. House-drain under floor of two rooms, and joints being uncemented are leaking. Drain laid