In *Re Brown's Trusts*, L. R. 5 Eq. 88, decided November 15, 1867, William Brocklebank, being entitled to a certain interest in a trust fund, became insolvent in 1838. In the schedule of his assets filed under the insolvency he inserted such interest. No formal notice of the insolvency was given to the trustees of the fund, but the solicitor to the trustees, as being one of the creditors of the insolvent, knew of the insolvency. In 1844, William Brocklebank assigned his interest in the trust fund to Mr. Burkitt, and in 1849 mortgaged it to Mr. Boston, the petitioner in the case. Formal notice of these deeds was given to the trustees of the fund. The question was, whether the indirect notice to the trustees of the fund through their solicitor was sufficient to give priority to the assignee in insolvency.

Held by Sir R. Malins that it was not.

"The true principal," said His Honour, "on which questions of priority depend is, that it is incumbent on all persons dealing with *choses in action* to do all that is in their power to perfect their title, and they do not do so unless they give notice to the persons in whose hands such property is. I think these questions of notice should not be left open to speculation, but that formal notice should be required, otherwise indirect notice might be alleged, raising most embarrassing questions, which should be avoided."

And His Honour quoted with approval the decision of the Master of the Rolls in *Lloyd* v. *Banks*, L. R. 4 Eq. 222, 15 W. R., 1006 (since reversed on appeal L. R., 3 Ch., App. 488, 16 W. R., 988).

However sound in themselves may be the grounds of the Vice-Chancellor's decision, it is hardly likely that it would be upheld now that the decision in *Lloyd* v. *Banks* has been reversed on appeal.

On the question, then, as to the *manner* in which notice ought to be given in order to protect an incumbrancer, the principle which appears to be established by the general tendency of recent decisions is that enunciated by Lord Cairns in *Lloyd* v. *Banks*, that notice will be held to have been given to a trustee, if it be proved that the mind of the trustee has been brought to an intelligent apprehension of the incumbrance which has come upon the property, so that a reasonable man, or an ordinary man of business, would act upon the information, and would regulate his conduct by it in the execution of his trust.

With regard to the question "To whom ought notice to be given?" in addition to the cases above cited, we may refer to *Ex parte Boulton in re Sketchley*, 1 De Gex and Jones 163, decided by the Lords Justices in 1857. In that case a holder of shares in a railway company was one of the secretaries of the company. He borrowed money on a deposit of the certificates of the shares, but no further notice of the deposit was given to the company. He afterwads became bankrupt. The Lords Justices reversing the decision of the Commissioner in Bankruptcy, held, in spite of the official position of the bankrupt in the company, that sufficient notice of the transaction had not been given to the company, the notice which the bankrupt had, not being notice to him in his character of secretary, but in his character of shareholder only.

In giving judgment Lord Justice Turner observed:—

"It is the duty of the person by whom or on whose behalf the notice was given, to take care that it reaches the person who has the control of the property which it affects; and this, I think, cannot be said to be done where, there being other and more effectual means of giving the notice, it has been given only to a person who has an interest in withholding it."

The shares in question were, therefore, held to be in the order and disposition of the bankrupt with the consent of the lender. See also *Brown* v. *Savage*, 4 Drewry, 635.

It appears, however, from the cases of *Ex parte Richardson*, and the *North British Insurance Company* v. *Hallett*, that the mere fact that the person to whom the notice is given is a private friend of the assignor or assignee will not invalidate the effect of the notice; nor, after notice has been effectually given, will the laches of the person to whom it is given operate to avoid its effect.

Where a company is ordered to be wound up by the Court, a creditor of the company who assigns his debt completes the equitable title of his assignee by giving notice of the assignment to the official liquidator of the company, although the assignee be ignorant of the assignment, provided the assignment be made in good faith. *In re Breech-loading Armoury Company*, Wragge's case, L. R., 5 Eq., 284.

Notice to any one of several trustees is suffi- (V. C. K. in *Brown* v. *Savage*, 4 Dr. 640). But, as we have seen, no notice can be of any avail which is given to a person who has an interest in withholding it.—*Law Magazine.*

'MISERA SERVITUS.'

A striking instance of what foreigners justly consider an opprobrium in our law, is afforded by the decision of the Exchequer Chamber in the recent case of *Ryder* v. *Wombwell*. We refer to the mischievous propensity for avoiding the decision of points which the public welfare really require to be settled. To a certain extent no doubt prudence justifies a tribunal in confining itself to the decision of the questions before it in the cause. But where a mere rule of evidence, which has been left in doubt by antecedent conflicting opinions, is fairly raised and elaborately argued on appeal, it is lamentable that it should be left still as a stumbling-block in the path of justice, because the judges find it possible to decide the case without determining the disputed question.

It will be remembered that in that case the judges of the Exchequer were divided in opi-