

## CHIEF BARON KELLY—THE COST OF LITIGATION.

ference to decided cases. The modern lawyer is too apt to run to his bookshelves for a case which has some resemblance to that in hand, although the resemblance is frequently immaterial. During the last few years some powerful intellects on the bench have directed themselves to the occupation of breaking down this unhealthy habit of the modern English lawyer; but still it is a vice of the day. During his later days, the Chief Baron seldom professed a previous acquaintance with any case that was cited to him less than forty years old. He would examine a case, when cited, by the light of the principle involved and use it as an illustration in his judgment; but his knowledge of law was founded on general rules, and was unconnected in his mind with an action which at such and such a date was brought by A. against B. and decided in a particular way, or with an obscure passage in Comyn's 'Digest.' The Chief Baron's application of law appeared to be instinctive, so deeply was he imbued with its elements. In his later days it was a common saying that, the difficulty of making him understand the facts once surmounted, the law might be left to take care of itself. It was also a frequent observation that, if the Chief Baron differed from his colleagues, the chances were that he would turn out right. His career as that of a successful lawyer is the history of a man who succeeded entirely by his own energy and his own talents. The necessity for the rising lawyer to add politics to his numerous pursuits brought him in contact with persons and events from which no credit was drawn—a fact which forms part of the history of most public men, whether lawyers or not. As a judge Chief Baron Kelly will not take rank among those who have made law or expounded it in a form which make them the highest authority on every subject touched, but he filled his high office worthily. His career and character deserve a study which is full of instruction."

## SELECTIONS.

A leading topic of discussion in the London legal and lay newspapers, at the present time, is the cost of litigation. A

correspondent of the *Times* attributes the great cost of litigation to the law of evidence, and the necessity of calling and keeping in attendance a crowd of witnesses. He says:—"In former days causes were tried and witnesses examined on much stricter lines than they are now. Of late years cross-examination 'to the credit of a witness' has become an insidious cause of the protraction of trials. It has always been a rule in England not to admit secondary evidence of any fact if primary evidence can be obtained. The attendance of witnesses and the preparation of briefs for counsel and the fees of the latter are all regulated by these exigencies of the law of evidence. There appear to be two remedies for this evil: (1) A return to the old system of winnowing out each case by a process of pleading and extracting out one or two precise questions of fact which will constitute the issues to be tried, and to confine the evidence strictly to those questions; or (2) relax the law of evidence and to permit the judges and juries to consider documents and other matters of evidence, although not constituting primary evidence; and to modify the practice of the courts so as to allow of trials being postponed for such further evidence on controverted points as the judge may think necessary. The first alternative remedy would no doubt be a retrograde movement, although probably an improvement on the present state of things. I believe that the second remedy is the only one that could be successfully applied." He recommends the adoption of the French system upon the latter point. Much more conclusive is the reason assigned by another writer, who says: "Another great reason for the increase of costs nowadays is to be found in the division of the legal profession into the two branches of counsel and solicitors. Looked at by the light of reason alone, there is no logical argument whatever in support of that division. What can be more absurd than compelling a suitor to filter his case through the brains of one man into the ears of another? Even if a solicitor of talent and honesty wishes to act personally for his clients in those courts where he has equal audience he can only do so