

[CHIEF BARON KELLY.]

possessed few more ardent admirers than the Chief Baron, thought that his presence in the House of Lords would, in any way, be embarrassing to his party. Yet, if a man who has filled, with applause, one of the four highest offices of the law, is not the man to be elevated to the peerage, it may well be asked who is. If the explanation is to be found, or partly found, in the collision between the Chief Baron and the Lord Chancellor for the time being on the question of the Privy Council, it may be said to be more an honour to the Chief Baron to have died without the peerage than if he had received it. Unless the judgment of legal history reverses the opinion of the day, the Chief Baron was in the right; and the resolution with which he maintained his opinion, in spite of the injury which he knew he was inflicting on his personal interests, is a proof of independence of spirit of more value to his reputation than a peerage would be. The mystery, equally great, why the Chief Baron was not allowed to retire, is only partly explicable as wrapt up with the question why he was not allowed a peerage. It may well have been that the Chief Baron did not feel inclined to listen to overtures for his retirement unless the offer of a peerage were a preliminary step. The maintenance of an aged judge on the bench, after the time has elapsed when he can readily perform his duties, is very bad judicial economy. This is especially the case when the judge is the president of the Court, it being an incident of his office that he should ordinarily sit with one or two colleagues. The receptive powers fade early; and a judge, who requires twice or three times as long to take in the facts of a case as when he was in full intellectual vigour, is accountable, when he sits with his colleagues, for the practical withdrawal from the public service of several judges. In such circumstances, a retirement on full pay would be a pecuniary economy to the country; and, if a necessary condition of such retirement is a peerage, it requires a strong reason for excluding from the House of Lords to justify a refusal to comply with the condition. These considerations are so obvious that the authorities who de-

clined to be influenced by them can only be assumed not to be sufficiently alive to them. The moral to be drawn, from the fact that the late Chief Baron did not retire some years ago with a peerage, is that those who control our judicial system are either not sufficiently informed of what it is their business to know, or, as is more likely, are not sufficiently alive to the duty of interference.

Reflection turns upon the Chief Baron, now that he is dead, as representing the virtues and the failings of a past judicial age. There could hardly have been a better example of the stately dignity which is among the things of the past, equally with ruffles and walking-swords. It was often said that the Chief Baron was the only judge of his time who came out becomingly from the trying ordeal of walking up the nave of St. Paul's in his full robes and with his train-bearer behind him. His faults, too, were of the old-fashioned kind, in the sense that they were on the surface; and he was not corrupted by the tendency of the day for men to deceive themselves into thinking that they are serving high objects, when they are really serving themselves. It cannot be said that the Chief Baron held the opinion, which is now everywhere professed, that patronage is an absolute trust for the benefit of the public. Whether it is more dangerous for a public man to think that, in dispensing patronage, he may serve his friends so long as the public is not injured, or for him to be ready to express the most elevated principles on the subject, and yet not always to act as if the public interest were his sole and undivided object, may be open to controversy. But the new phase, as distinguished from the old, is to be recorded. The Chief Baron perhaps showed the old-fashioned character in his absence of cynicism. Although he was far from being credulous or easily deceived, he had none of the undue suspiciousness which is a bad modern development of character. He was not one of those men who earn a cheap reputation for acuteness by professing to smell gunpowder whenever anything is put under their noses. Another trait distinguishing him from his younger brethren was his grasp of general principle in pre-