

CHIEF JUSTICE WHITESIDE—PRIVILEGE OF COUNSEL.

fancy in its most graceful sallies ; and his too, in an incomparable degree, was that supreme excellence in an orator, the *dehors* of the Greek rhetoricians, that passionate eviction and all-persuasive *vehemence* of contention—

"Spurr'd at heart with fiercest energy
To embattail, and to wall about his cause
With iron-worded proofs."

In him the Forum has lost a great advocate, the Bench an upright conscientious magistrate, Ireland an illustrious and patriotic son. He had won the admiration of his profession, the esteem of his judicial brethren the applause of his country ; and who but mourns with us to-day that, by the relentless hand of death.

"The work is done,
That neither fire, nor age, nor melting envy,
Shall ever conquer."

—*Irish Law Times.*

PRIVILEGE OF COUNSEL.

The recent case of *Lewis v. Higgins*, which came before the Lord Chief Baron and a special jury on Monday, 4th Dec., seems to have thrown our daily contemporary the *Echo* into a state of some excitement and indignation. The action was brought by Mr. George Lewis, the well known solicitor, against Mr. Napier Higgins, Q.C., for a slander uttered by him whilst addressing the court on a motion in his capacity of counsel. As soon as it appeared that the language complained of was pertinent to the matter then before the court, and that it was spoken by Mr. Higgins as counsel in the case, the Lord Chief Baron ruled that the action was not maintainable, and a non-suit was accordingly entered.

The *Echo*, in commenting upon the case, after intimating that "a barrister with a wig on is a chartered libertine," and that "a law court, which should be the home and safeguard of justice, is the only charmed spot in England where gross injustice, as far as defamation of character is concerned, may be perpetrated," concludes its remarks thus : "Since the people have obtained more power we have seen a few law reforms accomplished, and possibly we shall some day see one carried in reference to the

privilege of barristers. Lord Chief Justice Erle said many years ago that he hoped he should live to see the day when counsel would be held responsible for their words. Had we been present, we should have said 'Amen.'"

It is difficult to imagine how a writer, professing to write in the public interest, could deal with the question in this spirit. He must clearly be ignorant of the grounds on which this privilege rests, and seems altogether to have lost sight of the true interests of the public, whose cause he professes to advocate. The fact is that the privilege of counsel is the privilege of the public ; and it is for the public convenience and in the public interest alone that that privilege is accorded.

This was pointed out as long ago as the year 1818, by Lord Ellenborough, in the case of *Hodgson v. Scurlett*, when he said : "So a counsel entrusted with the interests of others, and speaking from their information, for the sake of public convenience, is privileged in commenting fairly and *bonâ fide* on the circumstances of the case, and in making observations on the parties concerned, and their instruments or agents in bringing the cause into court." "In truth," they said "the freedom of speech at the Bar is the privilege of the clients, and not of the counsel." And this was pointed out still more clearly by the Lord Chief Baron when he said : "I think it essential that you (the jury) and the public should clearly understand that the privilege claimed by the defendant, Mr. Higgins, as applicable to this case, is not that of counsel, but the privilege of the people of England as represented by counsel. It is essential to the well-being of the whole community that a counsel, when once engaged, should discharge his duty fearlessly, without the shadow or shade of apprehension as to the consequences."

There can be no doubt that this is the true ground of the privilege, which also arises from the reason of the thing itself. This is pointed out so clearly in the argument of the counsel in the case of *Hodgson v. Scurlett* that we reproduce their remarks here : "If the counsel are not protected by law, it will be a very great misfortune to the clients of persons placed in similar situations. Every man's efforts will be shackled unless he is to be allowed to make such observations as, in the