

The Forum.

A CAUSERIE OF THE LAW.

CONDUCTED BY CHARLES MORSE.

It has been debated whether Lieut. Winston Spencer Churchill, of the Fourth Queen's Own Hussars, who went to South Africa at the outbreak of the war in the capacity of newspaper correspondent, so far infringed the recognized rules of war by employing arms against the Boers as to render his life forfeit to his captors. We think he did not. He simply laid down the status of a non-combatant, and assumed that of a combatant—so becoming liable to be treated as an ordinary prisoner of war in case of capture. (Hall's Intern. Law, 3rd ed. 403.) He did not incur the punishment of one who had been guilty of a breach of faith (Grotius: iii., 4, § 17); nor that of one who had violated any express or implied pledge. (Bynkershoek: Quaest, J.P., i., 1.). He merely accompanied the British troops, and fought with them. "A combatant is any person directly engaged in carrying on war, or concerned in the belligerent government, or present with its armies and assisting them." (Woolsey's Intern. Law, 6th ed., § 134, p. 214.) While a non-combatant may not practice a fraud upon the enemy and save his skin if captured, yet the law holds him in no parlous case if he, like Lieut. Churchill, forgets under the stress of circumstances that the pen is mightier than the sword, and goes berserk in the thick of a very pretty fight.

* * * To anyone reading with care the extremely painstaking and exhaustive arguments of counsel before the Archbishops of Canterbury and York at the Lambeth "hearing" in May last, it would seem impossible that a reported case of any moment bearing on the questions at issue could have been overlooked; yet such seems to have been the fact. In a case involving the impugned ceremonial use of incense and processional lights set for argument recently before Mr. H. C. Richards, Q.C., M.P., at one of the "Moots" at Gray's Inn, Mr. R. W. Burnie for the hypothetical defendant cited *Rex v. Sparks* in 3 Mod. 79, which the President of the "Moot" looked upon as sufficient authority to exculpate the defendant from the charge of infringing 1 Eliz., c. 2. The fact that Mr. Richards himself was one of the counsel retained at the Lambeth "hearing" renders the incident all the more note-worthy.