

HON. WILLIAM HENRY DRAPER, C.B.—CONSTITUTION OF APPELLATE COURTS.

and a handy book on the Law of Dower.

Chief Justice Draper has left behind him a name which will never be forgotten as long as Canada is a country. His fame is in the enduring monument of its laws, and recorded in the pages of the legal records that are adorned and illuminated by the depth of his learning and the brightness of his intellect. The remembrance of the eloquent speaker, of the tall, courtly figure, and courteous manner of the amiable, accomplished and high-bred gentleman, whose name was synonymous with honor, will in time fade away, but the name of Chief Justice Draper, the learned, able and upright judge, will remain, until Canada itself is forgotten.

His end was perfect peace, though he of most men (in this country at least) might have succumbed to the pride of intellect, and might have boasted that himself had placed him in the high position he occupied. His humility at the last, and his simple confiding trust in the Redeemer's promise, was that of a child reposing in the utter, unquestioning love of an indulgent father. Like his great predecessors, whose names he delighted to honor, he lived an example to our profession for all time to come; and like them he died a witness of the great truths which less gifted men sometimes affect to despise.

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Lord Beaconsfield has called down upon his head an amount of adverse criticism that would have appalled a weaker or less-experienced man. With scarcely an exception, the English papers both legal and lay, have called in question, and some have commented most severely upon the appointment of Mr. Thesiger as a Lord Justice of Appeal. Let us take an example from each class. The *Law Journal* says :

"The Earl of Beaconsfield loves to illustrate his own famous aphorism—'Nothing happens except the unexpected.' Who would have imagined that the choice of the noble Premier in the matter of the vacant judgeship in the Court of Appeal would have fallen on a gentleman who is only thirty-nine years of age, and who became qualified for the office but four months ago! * * * * *

"Let us assume that the Hon. Alfred Henry Thesiger will do his work thoroughly well; and when we so assume we desire to add that for our own part we believe in the justice of the assumption. Is the appointment for all that, a satisfactory one? We freely admit the advantage of having judges in the prime of manhood, and we certainly are not in favour of promotion by seniority. But it is a bold enterprise to set Mr. Thesiger in an office where he may have to overrule the opinions of men like Lord Chief Justice Cockburn, Lord Chief Justice Coleridge, Mr. Justice Lush, Mr. Justice Lindley, possibly even the opinion of the Master of the Rolls or of Vice-Chancellor Hall. Is it wise, moreover, to pass over the whole body of judges of the High Court, and to resort to the ranks of the bar for an appellate judge? We know that Lord Chancellors have generally been chosen directly from the bar, and we know that the law officers of the Crown have frequently been elevated to the highest judicial posts. But Mr. Thesiger is not Attorney-General, and so cannot have the prestige or experience of an Attorney-General. These imaginary precedents do not really apply to the case. The Prime Minister has, in effect said to each of the judges of the High Court: 'Do not think that the Court of Appeal is to be recruited from your ranks, or that proof of justice talent, discretion, and industry will bring you promotion. You have got as high as you can in the judicial scale. Like County Court Judges, you will have to stop where you are.' Unfortunately, the effect of such an appointment is not limited to the existing bench. Counsel of first-rate position and practice might hesitate to accept a judgeship of the High Court, but might resolve to accept it in the expectation of promotion to the Court of Appeal. That incentive is now gone; not without prejudice, in our opinion, to the future excellence of the bench."

The *Pall Mall Gazette* at first declined to credit the then rumoured appointment. After it had become certain, that influential journal thus commented :

"The surprise at Mr. Thesiger's appointment