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By Our Special Correspondent.

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With the opening of the new legal year comes the official announcement of the retirement of Lord Justice Bankes. His impending retirement was well known, but the announcement has none the less been received with universal regret in the profession. Lord Justice Bankes has been President of the second division of the Court of Appeal, the Court hearing appeals from the King's Bench Division, for the greater part of the post-war period. In the early part of that period and until trade depression killed litigation, that Court was faced with an unprecedented mass of business, and during the whole of it his Court has had its full share of the legal problems which are an aftermath of the war: not least those connected with rent restriction. No judge has displayed greater qualities of care, patience, courtesy and—not the least of the judicial virtues—equanimity. The profession applauds with equal unanimity the appointment of Mr. Justice Greer as the new Lord Justice of Appeal. His judicial manner is quiet and restrained, and the sensation-mongers of the evening papers have not found much scope for their operations in his Court. But in more discerning quarters his judicial reputation has long been regarded as of the highest, and his promotion was by no means unexpected. It is one of the anomalies of the English judicial system that the promotion to the Court of Appeal of a High Court Judge involves no increase of salary. If he be a King's Bench judge, however, it relieves him of the duty of going circuit, though some judges regard this as a matter for regret rather than relief.

Mr. Justice Greer's appointment has disposed of a rumour that it was intended in this instance to appoint a Chancery judge. Usually an appointment to the Court of Appeal is made from the division of the High Court from which the retiring judge originally came. The notion that this rule would in the present case be departed from was based upon the belief that it was intended to revert to the practice whereby the six regular judges of the Court of Appeal consist at

any given time of three Common Law and three Chancery Lawyers. This practice—if indeed it ever deserved so definite a name—calls to mind a curious and little known by-way of legal history relating to the constitution of the Court of Appeal.

The intention of the framers of the first Judicature Act, that of 1873, was that appeals to the House of Lords should be abolished, and that the High Court and Court of Appeal should together form what they have ever since been called, the "Supreme Court of Judicature". Provisions were therefore made whereby the Court of Appeal might be reinforced not only by Scottish and Irish ex-judges but also by the ex-chief justices of the Indian High Courts. This scheme never came into operation but was superseded by that prescribed by the Judicature Act of 1875. By this Act the "ordinary" judges of the Court of Appeal were limited to three—the existing Lords Justices in Chancery and one new appointment. All the other judges were ex-officio judges, the Lord Chancellor, and the three chiefs of the Common Law Divisions of the High Court, all of whom had other judicial duties to perform, and the Master of the Rolls who still continued to sit as a judge of first instance. It followed, therefore, that if the Court sat in two divisions, as it did, one division at least could not consist of the same judges save for a very brief period at one time. In fact the membership of the Court varied almost as much as that of the Court of Exchequer Chamber which it succeeded. The Judicature Act of 1876 provided for the appointment of three additional ordinary judges of the Court of Appeal, though these additional judges were not at once relieved from the duty of going circuit. The subsequent abolition of the Common Pleas and Exchequer Divisions reduced the number of ex-officio judges, whilst the Master of the Rolls ceased to sit as a judge of first instance. And thus we can see the emergence of the permanently-manned Court of Appeal as we know it, though not for some years after the first Judicature Act.

The Court has ever since sat regularly in two divisions, and, nominally at least, one division has taken Chancery and the other King's Bench appeals. The practice or tradition to which I have referred involved that the court taking Chancery appeals should consist of one Common Law judge and two Equity judges, and the court taking King's Bench appeals of two Common Law judges and one Equity judge. And some have seen in this arrangement a visible and solemn manifestation of the fusion of law and equity never likely to be departed from.

Speaking generally, it may be said that this arrangement was fairly strictly followed up to the war period. It has not been so since. For the last few years the Court has consisted of four Common lawyers and two Equity lawyers, and more than one opportunity of redressing the balance has not been taken. Facts indeed have made its adoption more difficult and perhaps less necessary. The Common Law appeals have greatly outnumbered the Chancery—the final appeals standing for hearing at the beginning of this term (the lists being unusually light) are 67 to 19—and in every recent term Appeal Court I. has spent some time hearing King's Bench appeals, whilst Workmen's Compensation appeals, which go direct to the Court of Appeal from County Courts and are not Chancery business, are always taken in that court. The great increase in Admiralty appeals in recent years has also complicated the situation.

It would therefore seem that as the present opportunity of redressing the balance has not been taken, when no complication such as the appointment of a Master of the Rolls arose, the older practice or arrangement has been abandoned. It never was, of course, enjoined by statute, and the alteration, if such it be, is but another instance of the way in which under our constitution unwritten practices are silently modified as occasion requires without any legislative act.