

Supreme Court Act

parliament the right to exercise judicial authority and to pass legislation that is equivalent to a direction to the Supreme Court of Canada? That is new jurisprudence. In that regard I am surprised that the president of the Canadian Bar Association has shown such gross ignorance that he has confused both. He suggests that the House of Commons should exercise judicial authority by telling the Supreme Court of Canada what to do. I have spoken perhaps jocularly, but when I make a serious argument and am not understood I have to use metaphorical language.

I have a question to ask the hon. member for Eglinton, who should be named a doctor of laws, *honoris causa*, by every university on the North American continent, for his lecture this afternoon to the Prime Minister and other members of the house. I had my part in it, and I am very grateful for it. There is nothing like the virtue of humility. I ask him to answer the question that was put to him by the hon. member for Davenport. The hon. member for Eglinton told us not to forget the voluminous jurisprudence of the privy council. What should we do?

Mr. Knowles: *Stare decisis*.

Mr. Pouliot: It may be black, it may be white; it may be grey, black and white at the same time. Accordingly the hon. member for Davenport, who is one of the new members of the house, used a pin to prick the balloon. I hope that the hon. member for Eglinton will be kind enough to give us further illumination on the contradictory jurisprudence of the privy council.

Mr. Cannon: I should like to say a few words on the amendment. We have had some extraordinary suggestions this afternoon. We have heard the hon. member for Kamloops suggest that the Supreme Court of Canada, after having been reformed by the legislation that is now being introduced, should be bound and gagged for all practical purposes. He has suggested that we should reform the Supreme Court of Canada and then say to it: You shall not be free to make your own decisions; you shall be bound by the previous decisions of the privy council, appeals to which we are abandoning.

We have heard another extraordinary suggestion made by the hon. member for Eglinton. He has suggested that we on the government side intend to throw overboard the doctrine of *stare decisis*. There is no suggestion that members on this side of the house want to throw overboard the doctrine of *stare decisis*. On the contrary, as the Prime Minister has said, we think it should continue to

be applied; but it should be applied according to the law, and according to the true nature of the doctrine. I will return to that point in a minute.

The third thing, and the most extraordinary one that has happened this afternoon, is that we have been given a lesson in Liberalism by the hon. member for Broadview. I certainly did not expect to receive such a lesson from him because he has never been accused, by any stretch of the imagination, of being a Liberal.

To return to the doctrine of *stare decisis*, it seems to me that there is a certain misapprehension among members of the house about the true nature and scope of that doctrine. In countries that base their judicial process on the common law, the doctrine of *stare decisis* is very important because, as we know, the common law is a development of decisions of the courts one after the other that built up the wonderful edifice of the law that we all admire, and which is known as the common law. That law is based upon judgments of the courts and not on statutes, and it is essential that those judgments should be followed by judges applying the same law.

When it comes to statutory law, and in particular the statutory law of the province of Quebec as incorporated in the civil code, we have not the same principle at all. There decisions of the court have not the force of law. They are simply interpretations of the law as it exists in the statutes, and have the value of authority, not the value of a statute.

To revert to the argument of the Minister of Justice, that if such an amendment were passed it would infringe upon the rights and prerogatives of the provinces, let me give this example. Suppose we passed the amendment, and suppose we told the Supreme Court of Canada that they were bound by the doctrine of *stare decisis* in that they had to follow past decisions of the privy council. In effect we would be telling them that they could not alter anything that had been decided by the privy council even on matters concerning the civil law of the province of Quebec. In effect we would be incorporating in the civil code of Quebec decisions of the privy council which may be erroneous. What shows that they have been erroneous is that in the past they have contradicted themselves. The decisions of the privy council on the interpretation of the civil code of the province of Quebec have been far from uniform. The jurisprudence has varied.

That is a clear example, and it demonstrates the value of the argument of the Minister of Justice when he says that we cannot do this thing because if we did so