

the inordinate and unjust expense levied upon Canadian suitors, who are compelled to travel across the ocean to obtain decisions in their cases. One of the English judges told me about ten years ago that consideration was being given at that time to a proposal to have the Judicial Committee sit abroad: it would visit Canada, Australia, New Zealand, South Africa and other places, as occasion might require. It seems to me that, had that proposal been carried into effect, we might not now be considering the entire abolition of appeals to the Privy Council. It would be intolerable to self-respecting people such as Canadians to continue taking cases across the ocean, at an expense sometimes of many thousands of dollars, in order to have them tried in a strange environment.

There are some timid souls who feel, of course, that were we to abolish these appeals we would lose the guiding hand of these supermen across the sea, and so they have suggested that we change the rules of *stare decisis* to make the rule a matter of law; that is to say, that the usual rule followed by all courts should become statutory law. The rule that one judge follows the decision already made by another judge of a court of co-ordinate or superior jurisdiction, is a good rule so long as it remains a rule. A rule is subject to exceptions—as the old saying goes: “Exceptions prove the rule”—but to a law there are no exceptions. The value of a rule is that it may be followed when it should be followed, and it need not be followed when it should not be followed.

Should some provision of the British North America Act conflict in the future with a decision of the Judicial Committee of the Privy Council, I would expect our local judges to follow the Act and not the decision. And I think that is what they will do. One wonders how progress could be made if the present-day judges always followed the decisions of their predecessors. How could you have progress in judicial matters under such circumstances? And surely there is progress in law just as there is progress in all other things. There is progress in the breadth of conception of judges as the years go by, and as knowledge widens and sympathies increase. It would have been a sorry day indeed for the judicial progress of Great Britain had we at any time in centuries past tied our judges to the barbarisms of previous days. Honourable senators, I am thoroughly opposed—and I think most informed lawyers will agree with me—to changing a rule, which is now only a rule, into a statutory provision. I think that such a change would be a disaster of great magnitude.

So for these and for many other reasons, which I might enumerate, I congratulate the

Prime Minister of Canada upon his courage in initiating this legislation. I congratulate him for attempting to bring to a close, I think for all time, the senseless and expensive procedure of carrying Canadian cases across the sea to be decided in an atmosphere which is not our own.

Some Hon. Senators: Hear, hear.

Hon. J. J. Kinley: Honourable senators, may I first of all bring attention to the fact that, except for the honourable senator from Peterborough (Hon. Mrs. Fallis) who passed on a special message of her own to which I shall later refer, so far only members of the legal profession have contributed to this debate. It appears to me that the proposed amendment to the Supreme Court Act is not entirely a legal matter. It involves the high government policy of this country, and it seems to me that any member of this house who has had any parliamentary experience can talk intelligently about the subject, and perhaps contribute something that the legal members have failed to contribute.

Hon. Mr. Aseltine: Hear, hear.

Hon. Mr. Kinley: Honourable senators, this is an Act to amend the Supreme Court Act, and the effect of it is to abolish appeals to the Privy Council. I have listened most attentively to the speeches that have been made by the eminent legal members of this chamber, and I must say that they were most interesting. They brought to mind many of the things I have learned about the British North America Act, and especially the fact that we are so dependent upon outside assistance to carry on the internal functions of our country.

During this debate I listened to the specialists: I heard a splendid speech by the senator from Inkerman (Hon. Mr. Hugessen) and a vigorous speech by the senator from Vancouver South (Hon. Mr. Farris); and this evening we had a good speech by the member from Toronto-Trinity (Hon. Mr. Roebuck), who seemed to be in harmony with the member from Inkerman. Well, specialists sometimes disagree, but a peculiar feature of this discussion is that while these specialists had different and opposing views, each arrived at the same conclusion—that he was going to vote for the bill.

One of the things that has made an impression upon my mind during this debate is the fact that Sir. John A. Macdonald and his associates, who framed the resolutions on which the British North America Act was based, had it in mind that the Canadian parliament would establish a General Court of Appeal for Canada, which would be the final court of appeal in this country. To me, as a layman, that seems clear from section