

*Supreme Court Act*

We have the utmost confidence in the supreme court. We have the utmost confidence in the men who sit on the supreme court. We have the utmost confidence that other great and qualified men, capable of being judges of such a court, can be found in succeeding years. Our lack of confidence is in the ability of government—and, Mr. Speaker, I am not referring to this particular government. Our lack of confidence arises because we know that governments or those who form them are politicians and as such are subject to political prejudices and passions as human beings. We know that governments have been known to interfere with the constitution and with the composition of the courts.

**Mr. Cruickshank:** The hon. member is talking nonsense now.

**Mr. Fulton:** What we want to do, in so far as is possible in this country, is to see to it that the court which is set up in Canada as the court of final jurisdiction is a court which cannot be interfered with in that manner. That is our reason for moving the six months hoist.

There is another matter to which I wish to refer, and perhaps it is more a matter of detail than anything else, Mr. Speaker; it is the omission from this bill of any provision which would preserve the principle of *stare decisis*. This principle has been referred to before. It is not a legal matter of interest only to lawyers but is a matter of interest to every one of us as Canadians, because that principle means simply this. It means that law is a settled thing and that the circumstances under which a man finds himself today—that is, his rights, privileges and duties—shall be the same tomorrow, and that we cannot change the law overnight, as it were, so that we suddenly find ourselves with a different set of obligations, rights and duties. That is the basis of the principle of *stare decisis*. It means that you follow a set of consistent laws; it means that if one court has decided so-and-so, then the same court with perhaps different judges will be bound by that decision and cannot start off at a tangent. It affects every one of us in our daily lives, and I think it is a matter of great regret that the government has not seen fit to embody that principle firmly in this bill.

I have referred to the statement of the chief justice. It is only a newspaper report; and while I am not suggesting that he has been inaccurately reported, it may be that the reporter did not quite appreciate what the chief justice was saying. But it certainly gives rise to misgivings to find that the chief justice is reported as saying that we are not bound by decisions of the privy council,

[Mr. Fulton.]

when we all thought that we were bound by them because of that principle of *stare decisis*. If there is no such principle embodied in this act, then on the day after the act becomes law, it is possible that the court can say: We are not bound by those former decisions and we are going to decide quite differently.

There are plenty of precedents for the embodiment of that principle in legislation when constitutions are set up or changed. My own province of British Columbia has it in the Laws Declaratory Act. I believe every new province of Canada which was created subsequent to confederation had a similar statute, the effect of which was that the law as interpreted by the courts, as in effect at the date that the constitution of the province was established, shall continue to be the law in effect from that day forward.

**Mr. Cruickshank:** Is that British Columbia's idea now?

**Mr. Fulton:** That is the statute of the province of British Columbia as found in the revised statutes of the province issued last year. I have it here before me. It is on the basis of that statute that I am making my statement.

As I say, there are plenty of precedents for it, and all it means is that it gives us a guarantee that the law as it exists today will be the law for tomorrow, without the possibility of a sudden overnight change. One recognizes, of course, that as time goes on the courts place different interpretations on the previous decisions. But one of the reasons that they modify the laws only gradually is that they regard themselves as bound by that principle of *stare decisis*. It is in our laws at the present time. If that principle were not incorporated in the act, the court would be free to launch out on any new tangent that it might choose to follow and change all the precedents overnight. I certainly believe that no restriction would be imposed upon the court and that a great deal of certainty would be engendered if such a provision were inserted in this bill.

I think the words I have put forward are all I have to say in this respect, Mr. Speaker. In conclusion I repeat that there is no suggestion of colonialism in a free and fully sovereign country saying of its own accord, if it wishes to do so, that we will preserve to ourselves the right or the opportunity, if we wish it, to submit disputes on questions between ourselves, where we know that passion and prejudice may be aroused, to a body not open and subject to that passion and those prejudices. We have had the right to end that for nearly twenty years. The fact that we do not exercise that right of