Hon. C. F. FRASER—Not when he makes a motion.

Mr. MEREDITH—When he brings down a return.

Hon. C. F. FRASER—That is the case here.

Mr. MEREDITH—How is a member of the Executive seized of the matter any more than a privat member?

Hon. C. F. FRASER—The Attorney General can say, "I am commanded by His Honour."

Mr. MEREDITH—Suppose in the case of the conviction of a member of some crime or felony would it not be perfectly proper for a private member to move in the matter and lay the record of the conviction on the table?

Hon. C. F. FRASER—No. Instead of laying the record on the table and making a motion on it, he should move that a certified copy be brought down, printed, circulated among the members, and then he could have made a motion on it.

Mr. MEREDITH—You will find no such procedure.

Hon. C. F. FRASER—You will find no such different procedure. If he wants a paper brought before the House, he has two ways of getting it here, either by a motion, or he can get it here through one of the Committees, such as the Standing Committee on Privileges and Elections. He has not tried either way.

Hon. G. W. ROSS quoted Bourinot as follows:—

In other cases where there is evidence of crime or of a person accused of being a fugitive from justice, it has been considered sufficient to lay the papers formally before the House, but whenever the seat or character of a member is affected the House will invariably proceed with due caution and deliberation.

So that the precedent which he quotes is not a precedent in point at all.

Mr. MEREDITH—The hon. gentleman is discussing a different point. That is where the House is acting simply on a motion for referring to the Privileges and Elections.

Hon. G. W. ROSS—The point is whether we shall entert in a paper not in form.

Mr. MEREDITH contended that in the case of O'Donovan Rossa in 1870, returned from the County of Tipperary for the House, the House took action. Then in 1875, in the case of John Mitchell, a similar proceeding was taken, and it seemed to him that the Commissioner of Public Works had no right to contend that a private member could not take action in the matter.

The SPEAKER—I cannot change my expressed opinion. Any public document must be brought down by a member of the Executive Council. I cannot see any analogy in the cases cited. If he chooses to make the motion of which he has already given notice, it will be proper for the hon. member for London to read the paper.

The subject then dropped.

A NEW WRIT REQUIRED

Mr. MEREDITH moved, "That a new writ do forthwith issue for the election of a member to fill the vacancy in the representation of the electoral district of the East Riding of Simcoe, caused by the election of Charles Drury, Esq., for that constituency having been adjudged to be void." He recited the course which had been followed in the Courts, and contended the House was seized of the fact that the seat is vacant. He quoted cases to point to the precedent set by constituencies being vacated by the death or disqualification of members.

Hon. OLIVER MOWAT said, in dealing with the question of a member's seat, the rule was, that the utmost possible caution was necessary. That was the rule in England, and it had always been so in this country likewise. The present case was a new one. The circumstances were in some respects peculiar, and it seemed to the Government that it would be a case in which too much haste should not be taken, but one in which that course should be adopted that was customary, viz., to refer the matter to the Committee on Privileges and Elections. His hon. friend suggested a number of cases in which no such action had been taken, but he wished to point out that the circumstances were entirely different. The hon. gentleman opposite said in the English House of Commons, when a question of this kind was raised, and when the seat was vacant beyond doubt, the practice was for the House to issue a writ for a new election.

Mr. MEREDITH—What is the doubt here?

Mr. MOWAT said he was coming to that. He could not say everything at once, but he thought he would be able to convince the hon. gentleman opposite and the House before he was through that the position he took was the correct one. Whenever a case was peculiar in its circumstances it was a special and proper case for referring to a committee instead of to the House. If the matter was a very pressing one there would be greater force in the argument of his hon. friend, but if a writ were issued now it would be extremely doubtful if the member elected could take his seat this session. At all events he could not take it until within a few days of the close of the session, and his hon. friend knew as well as he did that it would not make the slightest difference to the riding, to those on the opposite side of the House, or to those on his own side, if a new member were invited to take his seat for the last three or four days of the session, on whichever side he might sit.

THERE WAS, THEREFORE, NO REASON

why they should adopt a course of an unreasonable kind, or that undue haste should be employed, or that any course should be taken which would prevent proper deliberation. One advantage of a reference to the committee was that discussion could take place there in a less formal way than it could here. If the hon. gentleman was convinced in the committee that any view he had taken was wrong in the first place he would have no difficulty in withdrawing from it. His hon. friend insinuated that this course might be taken for the purpose of securing Mr. Drury's election. The Government were contemplating nothing of the kind: if Mr. Drury was enabled to take his seat it would not be through any legislation in his favour. Now, it was a matter of great importance that cases of this kind should be determined under the statute if possible. This was a principle admitted by all parties, and one on which all parties insisted. The old method by which elections were tried was found to be attended by many great evils and wrongs. The legislation, therefore, in England—and they had followed it to a great extent here—provided for the disposal of all cases where it was possible, except in cases of a formal kind, by the means which he proposed. His hon. friend had seemed to regard this as a case for which the statute did not provide. He (Hon. Mr. Mowat) was not prepared to say the statute did not provide for this case. They were told that the Trial Judges of election cases took one view of the matter, and the Court of Appeal took another. He did not know that either party had received any official declaration from the judges upon this point; but his honourable friend represented that the Court of Appeal took one view of it and the Trial Judges another. The Court of Appeal held that all it had to do was to deal with the principle of the question referred to it, and that it was the duty of the Trial Judges to make out the certificate for the Speaker. It seemed in some official way—not by any declaration or formal document from the Court, but it was said, that the Trial Judges had taken a different view of the matter. He did not think there should be

ANY SUCH BLOCK UNDER THE STATUTE

by which a Court had the power to interfere in this matter. If it was a block they should ascertain it, and they could do this promptly. The hon. gentleman had referred to a new writ being ordered where a member had died, and also where a member had vacated his seat to take office, but in reference to those cases the course which was taken was provided by the statute, while he wanted them to apply that method to a case for which the statute did not provide, if it was settled that the statute did not provide for it. Therefore he submitted the two cases referred to were no precedents at all. Then he referred to a case in which a member had been found guilty of crime, in which the House interfered and issued a new writ without the question going to a Committee. There was no analogy between that case and this one. It was one thing for a House to say it would not suffer a member to remain in it, but it was quite another for the House to say it would take such action when there was no conviction against the party. Mr. Drury bribe nobody, he sanctioned bribery on the part of nobody, and he knew of the bribing of nobody. He did his best to make the election a fair one, and the act for which he had vacated his seat was committed by another, who was held to occupy the position of his agent. It required a great deal of consideration to conclude whether, as a matter of course, the House would interfere where no crime had been committed on the part of the member whose seat was vacant. He was not saying Mr. Drury ought to take his seat, but he drew this contrast to show that the case was a proper one to refer to a committee. It was well to remember also that the Trial Judges were not agreed as to whether the election was voided, and that the judges of the Court of Appeal were not decided upon that point. In view of all these circumstances he thought the proper course to take was to refer the case to the Committee on Privileges and Elections, and he moved the following amendment:—That all the words in the original motion after "that" be struck out and the following inserted instead:—"It be referred to the Standing Committee on Privileges and Elections to inquire and report whether or not a new writ can or should issue for the election of a member for East Simcoe, with power to send for and examine papers, persons, and records."

Mr. MEREDITH contended that the House was quite capable of deciding the question without submitting it to a committee.

Hon. C. F. FRASER—The hon. gentleman will not give his opinion as a lawyer that the seat is vacant, and yet he says the House is seized of the judgment of the Court in declaring that the seat is vacant. I say that this House is seized of nothing of the kind, and there stands on the record his motion trying to get the House to place upon its official record the record of the Court. This shows that he, as a lawyer, and the leader of the Opposition, admits it to be of importance for the proper putting of his motion before the House, and for its sanction as a motion that these should be on the journals of the official record of the judgment of the Court. He has not succeeded in doing that. He says this House has no doubt in this case, but the fact is that this House is not only in doubt, but I go further, and say that this House is entirely without knowledge—that I am only putting it in plain English when I state that this House is entirely without knowledge of the case.

Mr. MERRICK—Why was it not brought down then?

Hon. C. F. FRASER—Why didn't they put themselves to the very slight trouble of moving for a return? They assume that because individual members of the House have read the newspapers, this House is formally in possession of this judgment of the Court, but I say that at the very threshold of the position he has not made out his case, and

NO LAWYER WOULD STAKE HIS REPUTATION.

on an assertion that he had. What Mr. Mackenzie did was to place his judgment of outlawry on the journals of the House in an official manner, and two days afterwards make his motion. There is no such procedure as that here to-day. There is not a single word to show that the member for East Simcoe has lost his seat, and yet in the absence of that record the hon. member for London asks the House to state its opinion that the seat is vacant. Now let me push this matter further. Suppose it was sought to-day to take action against certain conspirators. Because we have had the official return of the Commission placed on the table of the House, it has been here several days, and it is stated that two of the Commissioners concur in their finding. He might have said—and said rightly—before you take action every member has a right to know everything in connection with the case, and to have it printed before him. You would not have heard him suggest that there is no doubt the Commissioners' report is correctly on the journals of the House; he would have been standing by the issue whether the forms of the House had been complied with. And that is what is proposed now. He suggests that if the amendment of my hon. friend carries, that—in this day of newspapers and reporters, when publicity is given to all the proceedings of this House, and when reporters watch on the heels of every Committee—it might be possible for the Attorney-General to get the committee in some hole and corner and persuade them to do something which they would not do in open daylight. The same publicity is given to the proceedings in committee which is given to our proceedings here, and the Attorney-General will have

AS LARGE A RESPONSIBILITY

in committee as he has here. The report of the committee also will have to be made to the House, and the leader of the Opposition will have the opportunity of moving in the matter when the report is submitted. Take the case which occurred in the early days of last session, and about which we all expressed so much sympathy,—how carefully we were asked to proceed then! Every one knew the unfortunate circumstances of that case, and we were told by the member for East Toronto that we must not proceed with undue haste, and that is ought to be inquired into carefully. We had all the official proof before the House, and not content with that, we had to send for the physician under whose charge the gentleman was.

Mr. MEREDITH—That was to show whether or not he was incurably insane.

Hon. C. F. FRASER—Undoubtedly so, but each member of the House had no doubt about it. I contend that in this case there is nothing in the records of the House to show that the seat is vacant. It is not enough that there are opinions; we must have proof. My own opinion is that Mr. Drury is qualified to sit in this House, and that if he did sit and vote he would not incur a penalty for doing so. The member for London has inferred from the absence of the member for East Simcoe that he is not here because he thinks he is not qualified, when as a matter of fact the latter told the leader of the Opposition that he had no taken his seat because he didn't think it would be allowed to go off without comment or criticism, and he didn't desire to subject himself to that. He had no doubt about his right to sit. I am satisfied that if the member for East Simcoe were here now there is nothing to prevent him voting on this question, except the rules of the House, which forbid a member voting on a question when he is himself involved.

Mr. CREIGHTON—That would forbid him.

Hon. C. F. FRASER—And so you have to invoke the rules of the House against him as against a member.

Mr. CREIGHTON called attention to the fact that Mr. Fraser had not moved that the return of the Court be placed in the hands of the Speaker, and that a writ issue for East Simcoe.

The question was then put on the amendment by the Hon. O. Mowat, as follows:

YEAS—Messrs. Awrey, Badgerow, Balfour, Ballantyne, Bishop, Blezard, Caldwell, Cascaden, Chisholm, Cook, Dill, Dryden, Ferris, Fraser, Freeman, Gibson (Hamilton), Gibson (Huron), Gillies, Gould, Graham, Hagar, Harcourt, Hardy, Hart, Laidlaw, McIntyre, MacKenzie, McKim, McLaughlin, McMahon, Master, Morin, Mowat, Neelon, Pardee, Phelps, Rayside, Ross (Huron), Ross (Middlesex), Sills, Snider, Waters, Widdifield, Young—44