

MORRIS ACTION WAS DISMISSED WITH COSTS.

Chief Justice Declined to Give Opinion on City's Position re the Cataract.

Mr. Morris' Solicitor Announced That the Case Would be Appealed.

The important action of Mr. R. S. Morris against the city to restrain the defendant from entering into a contract with the Hydro-Electric Power Commission for power and light was reached in the High Court before Chief Justice Meredith yesterday afternoon. The question was fought out on purely technical grounds. All charges, in the statement of the claim, relating to bribery and corruption were dropped. Mr. Geo. S. Kerr, solicitor for the plaintiff, said he had the information in his hands to show that money had been used, carriages hired and men induced to vote, but the information had been given by parties under the pledge that their names would not be used, consequently the evidence could not be produced to prove the charges.

Only two witnesses were called, City Clerk Kent and Mr. W. J. Carlie, deputy returning officer for ward 7, division 11. Mr. Kerr was asked to produce all by-laws in reference to the proposed contract with the Hydro-Electric Commission, the voters list and the documents referring to the action. Mr. Carlie was asked if the poll-clerk was present on the day of the voting, to which question he replied in the negative.

In his examination of Mr. Kerr, Mr. Kerr attempted to prove that the voters' lists supplied to the deputy returning officers were not in accordance with the requirements of the Municipal Act, which provides that the clerk furnish lists, alphabetically arranged, of all the ratepayers qualified to vote on money by-laws. The witness admitted that he had furnished a list of all voters entitled to vote in the polling subdivisions and placed the letter "O" opposite to the name of each voter qualified to vote on the plebiscite. With each list supplied, he enclosed a letter of instruction for the deputy returning officers giving them particulars as to how to handle the list.

Mr. Kerr maintained that this was not in accordance with the Municipal Act, which required that a separate list should be made out for the officers with only the names of qualified voters enrolled. This was his first argument that the contract between the city and the Hydro-Electric Commission should not be entered into. He also showed by the lists of those who voted that eight men had cast votes who were not entitled to a vote at all, but whose wives, according to the list, had the right of franchise. The second contention set up by Mr. Kerr was that the city has already entered into a contract with the Cataract Power Company for supplying power for the Beach Pumping House, the Annex Disposal Plant and all other places and purposes, which it now intends to contract for with the Hydro-Electric Commission.

Mr. Kerr argued that the contract entered into by the city with the Cataract Company was binding for five years, with a provision for its renewal. For this reason no new contract could be entered into with another company or commission and violate the former, nor could a new one be entered into at a higher figure for the same identical purposes. A rather lengthy argument took place between the solicitor and His Lordship on these technicalities, the points in which are clearly set forth in the judgment on the action which follows:

"I have a clear view as to the two points that Mr. Kerr has skillfully and ably argued, and I do not think it is necessary to hear Mr. Holman.

First—As to the one attacking the preliminary which Mr. Kerr contended was necessary to be fulfilled before the Council was in position to enter into a contract with the Hydro-Electric Power Commission, that by the provisions of these statutes a contract cannot be entered into for the supply of power by that commission to a municipal council unless a by-law has first received the assent of the electors, or a question under section 533, par. 1, has been submitted to the electors and a majority of them have voted yes thereupon. The second of these methods was that adopted in this case. At the last municipal election a by-law was passed by the Council, which had the right to say whether that by-law should be submitted to the whole of the municipal electors, or only to those who were qualified to vote on by-laws creating debts. The Council determined that it should be submitted to those entitled to vote upon by-laws creating debts, and a by-law was accordingly submitted at the municipal election. The persons entitled to vote are defined in a provision of the municipal act. Certain leaseholders are entitled to vote; but no question arises as to them, because, as the clerk deposed, and as Mr. Kerr conceded, there were no leaseholders who, under the provisions of the statute, were entitled to be on the list and to vote. In passing I may say that the provision of the law is very defective in that respect; because there can be little doubt that numbers of ratepayers in large cities like Hamilton, Toronto and London, have leases entitling them to vote, but there is no machinery by which they can appear upon the assessment roll.

Mr. Holman—The act of last session makes provision for it.

His Lordship—I understand there was an attempt made last session to make provision for that. However, that question does not arise here. The objection taken to the vote is that the clerk, instead of preparing a separate list, extracting from the general list the names of those entitled to vote on by-laws for the creation of debt and furnishing that to the deputy returning officers or to the returning officer, sent them or him the whole list with the letter "O" opposite the names of certain persons whose names appear, and, in his affidavit verifying the list, he made a statement that persons entitled to vote upon that by-law and the question submitted under its provisions were those opposite to whose names the letter "O" signifying owner, appear. Now, it is argued by Mr. Kerr that that is not a substantial compliance with the provisions of the law. I think it is. Supposing the clerk, instead of taking the course which he did, had spent several hours, or employed

clerks at considerable expense, to rule out in red ink, or black ink, or blue ink, as suited him best, or to strike out with a pencil the names of those that appeared upon the list opposite which the letter "O" did not appear, it would have been an exact compliance with the provisions of the statute, subject to an observation which I shall make in a moment. Now, how can it be said that where he does not do that, but makes out a list with the letter "O" appearing before every name of a voter entitled to vote upon a by-law for creating a debt, and says, "That list is to be read as if it contained only those names," that there is any room for a mistake on the part of the returning officers? When the voter comes to ask for his ballot, the list being alphabetical, the deputy returning officer has only to turn to the list, and if he finds the letter "O" opposite the name he gives the ballot. If he finds it not there then he refuses it. It is said that if 18 persons have voted, some of whom, probably most of them, according to the information of the clerk had, were the husbands of wives whose names appeared upon the list, and their names did not, I can very well fancy my knowledge of the way these things are done, that even if the list had been furnished, to Mr. Kerr contents it ought to have been, that the name of a ratepayer only once, and it might have been that some of the ratepayers were entitled to vote in several wards.

Mr. Holman—The clerk swore that the name was in every ward.

His Lordship—Well, even if it were not so, in the absence of any evidence that the names of persons whose names did appear upon the assessment roll several times, and something that would indicate that that would have affected the result, it should not give effect to that objection. If, as Mr. Holman now says, the names were repeated in each subdivision in which the owner was entitled to vote, then of course there is nothing at that point taken by Mr. Kerr.

Then with regard to the other, which probably is the most substantial part of the case, I think it is quite clear that there is no power in the court to overrule the action of the judgment of the Council with regard to the matter of entering into a contract with the Hydro-Electric Power Commission. Long years ago—down even to modern times—there prevailed upon the bench the notion that the court had a kind of supervisory power over the by-laws of a corporation, and had a right, where they thought they were opposed to public policy, in the public interest to set them aside. As late as, I think, it is 12 Queen's Bench, judgment was delivered, in re Barclay, I think, a judgment by a very eminent judge in which he laid that down as being within the power and duty of the court; but modern decisions, in England especially, have entirely exploded that doctrine. The late Lord Russell of Killowen delivered in one of the cases a most luminous judgment in which he pointed out the essential difference between municipal councils and trading corporations. Municipal councils were elected by the people, whereas the corporations were, from earliest days, elected by the public interest to act in the name of the Crown, whose duties and powers were only quasi public. The Privy Council also, in an earlier case, I think, Naylor vs. Somerville, dealt with it in the same way and expressed the same view. Then there is a subsequent case of Sutton vs. Butters, in which other judges came to the same conclusion, and anybody who is curious about it can find in the dissenting judgment of Lord Justice Matthews in one of these cases the line of demarcation between the old idea as to the powers of the court, and the idea which prevails in modern days. Now, while courts, like private individuals, are very slow to give up powers which they have exercised, and perhaps the last vestige of this power has not yet disappeared, still I think everything points to the idea that where a municipal council, acting in good faith, and within its powers as they appear in legislation, does enact, or enters into a contract—assuming no fraud and no dishonesty on the part of the members of the Council—no court has a right to interfere upon the ground that what they are proposing is an unwise thing—that what they are proposing to do is not sound as a matter of public policy—or upon any other ground than the one which I have suggested—bad faith or the misuse of the powers of the corporation. The legislature has left to the Council, elected by the ratepayers, the business that the Council shall do, and I think it would be a most unfortunate thing if judges, without any special training or aptitude for dealing with the large commercial business matters which engage the attention of councils, should assume to supersede their judgment as to the expediency of any course proposed to be taken upon such questions as these by those who have been appointed by the Legislature to deal with such matters. I think the court, if it assumes to take that course, would be arrogating to itself powers which it did not possess. In this case no fraud, no misconduct, is imputed to the Council. It is said that the Council has entered into another contract for the supply of power, partly at all events, that is, with regard to the sewage disposal works and the Beach pumping station, for the very same purposes as the power which they are proposing to take from the commission is to be used. It might be, if that were an entering into a contract in a case in which they were bound to another party with regard to the very same thing, that that might be an act of misconduct or breach of trust on the part of the corporation. But that is not the case. The Cataract Power Company, with whom this contract has been entered into, claims that it is a contract binding for five years, with provision for its renewal. The city con-

tends that that is not the effect of the contract—that it is only a contract binding for one year; and a learned judge, who had to pass upon the validity of that contract upheld, if I understand the case aright, upon the very ground that it was not open to the objection that it had not received the assent of the ratepayers, because it was a contract not binding beyond one year. Now, it would seem to be an extraordinary proposition if, in that state of things, it is not competent for the Council of the city of Hamilton to enter into a contract with the Hydro-Electric Power Commission or with anybody else that it chooses for the supply of power. See what the consequence would be if it were otherwise. The question is not brought to a test for a year or two. Apparently the Cataract Company is not suing for its account. If it did sue for it the question would be immediately raised, and having regard to the course of litigation and the importance of the question, it might be two or three years before a final judgment would be reached in the case, even if the view of Mr. Justice Anglin prevailed as to the effect of the contract. What would be the result? It would be that this corporation would have been tied up from getting power from anybody in the meantime—without any right to avail itself of any opportunity that was afforded in the meantime to enter into a contract with somebody else. It seems to me that upon the plainest business principle, as well as according to the law, it was for the Council to determine whether it was expedient, in the condition of matters which existed, to enter into this contract or not—that having in good faith come to the conclusion, the ratepayers having sanctioned their doing it also, which appears to be an essential to the right of their entering into a contract, this court has no right, no power, no jurisdiction to interfere with the judgment and acts of the Council. In my opinion the action fails, and must be dismissed.

Mr. Holman—Your Lordship has alluded to the position of difficulty in which the city of Hamilton is placed with regard to the Cataract Power Company. I am asked by the city of Hamilton to request your Lordship to give an opinion.

His Lordship—Sufficient for the day is the evil thereof, as said of old, and I am not going outside of what I have said.

Mr. Holman—Does the action stand dismissed with costs?

His Lordship—Certainly.

Mr. J. Holman, K. C. of Toronto, assisted City Solicitor Waddell for the defence.

Mr. Geo. S. Kerr announced that he would appeal against the judgment.

A BLACK SHEEP.

Two Women's Deaths Due to a Clergyman.

One Robbed and Deserted Returned Home and Died.

Sarnia, Ont., Sept. 29.—Rev. Evan I. Evans, whose wife is reported to have committed suicide at Penywllt, Wales, came to Sarnia three years ago from Wales, as rector of St. John's Episcopal Church, in the south end of the town. He was an energetic administrator, and the new St. John's Church was built by him. Shortly after his arrival his wife and family joined him. A little over a year ago his attentions to some of the female members of his congregation excited considerable comment, and his wife a year ago left him, returning to Wales. A few days after his departure Evans disappeared with a woman named Nellie Davis, forty years old, who had been a clerk in the registry office and a member of the church choir. Evans told Miss Davis that he had secured a divorce from his wife, and the pair were married by the Episcopal minister at Niagara Falls, N. Y. They then went to New York, Miss Davis having received \$100,000, which she took with her, and this Evans borrowed a month after the marriage, and deserted her. She was brought back to Sarnia by her mother and sister, and died in the hospital here a month later. There was a strong impression that the committed suicide. Evans left his financial affairs here in a very bad shape. Since his departure there have been several rumors as to his location, but no definite word has been received about him.

550 MILES OF CARS.

Western Wheat Crop Will More Than Fill Them.

Montreal, Sept. 29.—The housing of a record harvest is being provided for by a new elevator record, according to news which has reached Grand Trunk headquarters. Two hundred and twenty new elevators were constructed in the Canadian west, during the past building season. This gives the prairie provinces a total of 1,700 elevators over the lines of the G. T. P. C. P. R. and C. N. R. A western railwayman estimates that it would require a train 550 miles long to carry out this season's crop. If broken into separate trains, it would mean 2,425 trains of thirty-five cars each.

MONEY AND LIQUOR.

Mysterious Stranger Threw Cash Around During P.E.I. Election.

George, P.E.I., Sept. 29.—The trial of the election petition against Mr. A. L. Fraser, Conservative M. P. for King's, opened in Georgetown yesterday. There are two hundred witnesses to be examined. Evidence so far shows that liquor and money were used during the election.

One man got \$5 from a mysterious stranger, who threw money on the ground before him, and another found a case of liquor in his wagon. He did not discover his good fortune till half a mile from town, where the liquor was distributed among the boys. Another had some mysteriously placed in his granary. Sensational developments are expected.

MRS. TURNER FAINTS IN COURT

Searching Investigation at Inquest Into Baby's Death.

Railway Conductor Says She Was on His Train.

Inquest Adjourned After Eight Witnesses Had Been Heard.

Toronto, Sept. 30.—Moving with uncertain, hesitating steps out of the court room, her head thrown away back and her eyes closed, Mrs. Mabel Turner supplied a dramatic role of the infant-murder inquest last night by collapsing with a loud moan into the arms of a court officer. The incident occurred near the close of the hearing, just as Harry Gmelin, the man with whom she lived as wife while at Niagara Falls, was giving evidence of his knowledge of the woman's history. Mrs. Turner was carried into a side room and given a drink of water. She did not reappear in the court room.

The hearing extended for nearly three hours, and eight witnesses were called. As the Crown officers have still much evidence to put in, Coroner A. J. Johnson ordered an adjournment until Friday night. It is possible that the inquest will not be finished even then.

Coroner Walter A. Scott, of Niagara Falls, N. Y., was the first witness called when the inquest was resumed. Dr. Scott said that he had received word of the finding of the body of the Authers infant on Sept. 16. He went to a spot two and a half miles north of Suspension Bridge and found the body in a box lying about twenty feet below the roadbed. "The neck," said Dr. Scott, "showed marks of a twisted cloth or rope all the way around. On the sides of the neck there were bruises which, I should say, were made by human fingers. In my opinion, the infant was strangled." Dr. Scott testified to finding an adhesive tape on the dead infant's back, bearing the name Authers, and identified the tape handed to him by Assistant Crown Attorney Monahan. Edwin O. Parish, conductor on a New York Central train running between Buffalo and Lewiston, testified that he was in charge of the train which left Niagara Falls at 1:25 p. m. on Sept. 16.

"Did you ever see the lady in white, there, before?" asked Mr. S. H. Bradford, K. C., for the Crown, nodding toward Mrs. Turner. The witness studied the woman for a moment.

"Think I have," he said. "Yes, I am sure I have."

"Where?"

"It was on my train that day. She was in the second coach. I took a ticket from her."

Mr. Bradford then gave the witness to Mr. Robinette.

"Did you have shown to you a photo of Mrs. Turner?" asked the defence attorney.

"I did not," said Parish, firmly. "Who pointed her out to you?"

"Nobody."

Mr. Robinette put several pointed questions along this line, but the witness held to his position.

"Now you have helped a great many ladies off your trains, ladies with all kinds of dresses," said Mr. Robinette. "How do you account for remembering Mrs. Turner so plainly?"

"Well," he exclaimed, with dramatic intensity, "when she came out of the car on to the platform she was very pale. There was not as much color in her face as there is to-night. Then she was smiling. The smile she had that day resembled the way she was smiling just now." The witness closed his evidence with a tilt with Mr. W. A. Henderson, appearing with Mr. Robinette, in which the witness held his own.

Mr. Harry Gmelin said he had known Mrs. Turner since the summer of 1899, when he was living in Toronto on Alice street. She was in the city until 1903, when she went to the United States. Witness did not see her again until February, 1905, in Toronto. She was in Toronto until March of that year.

Witness said Mrs. Turner came to visit him at Niagara Falls in July. He saw her again in August at the Pierce avenue address. The next time she came over she brought a baby which she said belonged to Walter Sterling, a broker, who was said to live on Palmerston boulevard. She kept the baby with her during her visit and then took it back to Toronto. Witness then told of seeing Mrs. Turner on September 16th.

"Did she live with you as your wife on all these occasions?" he was asked.

"Yes, sir."

"During the ten years you have known her, has he given birth to a child?"

"No, sir."

Mr. Henderson here made an objection, claiming that the questions were not relevant, but Coroner Johnson did not allow the objection.

"I have been over some of this evidence, and the questions are relevant as you will find out later," said Dr. Johnson.

"How is it that you haven't been living with her?"

"I have been trying to break away from her for many years."

Witness said he had sent Mrs. Turner money. She had told him she was not in good circumstances.

At this point Mrs. Turner was assisted from the room, collapsing in the corridor. Mr. Monahan after a pause continued the examination of Gmelin.

"Now at any time you knew her did she have any babies, other than the Sterling one?"

"No," answered Gmelin. "Well," he added, "she had a little girl while we were on Main street. It was about two years old, and was with her about a week."

"And she never had any other children?"

"Not that I know of."

"During the time you were living in Brooklyn did you know a woman named Mrs. Wagner, or did you ever hear Mrs. Turner speak of her?"

"No, I did not."

To Mr. Monahan Gmelin said he understood Mrs. Turner's maiden name was Tomlinson, and that she came either from Toronto or Uxbridge.

THREE ATTEMPTS.

Yeggmen's Determined Efforts to Wreck Safe Failed at Chatham.

Chatham, Sept. 29.—Yeggmen made three attempts to break the combination of the deposit vault in the Canadian Gas Power and Launch Co. offices last night. The office was found to be in a general state of disorder this morning, and three holes had been drilled in the door, but apparently the burglars failed in their attempt. They also tore the tin sheeting from the side of the vault and tried to beat a hole through the concrete wall with an iron bar.

The company has not been running for some time, and there has been no watchman.

A despatch received from Northwood states that safe blowers made an attempt on the safe in the G. T. R. offices there, and that three stores in Glencoe were broken into.

Service for an honest race means progress in the heavenly race.

WEAR CLIMIE'S EASY-FIT GOODYEAR WELT SHOES

Take a look at the Shoes in our windows and see some of the new fall styles. Of course we can show but a few styles in our window, but they will give you an idea of what this stock is like.

FAMILY SHOE STORE—This being a family shoe store, it is impossible to describe the many different lines which we handle. We will simply say that we have the best of the latest styles in patent, tan and black leathers.

It's Your Money
Children's Shoes

Do not take any chances. You are absolutely safe in dealing in this store. You will have a large assortment to select from—and we sell our shoes at a fair living profit and have but one price to all.

A GREAT ADVANTAGE—One great advantage we have over all other dealers in the city is in our having the sole agency in Hamilton for the "HAGAR SHOES" for men and women, which are admitted by all shoe manufacturers to be the NICEST and BEST shoes made in Canada. The name "Hagar" is stamped on the sole—our name on the lining.

LADIES' SLIPPERS—Our assortment of fine Slippers, made by Chas. K. Fox, the largest manufacturer of ladies' fine Slippers in the States is now ready for your inspection, and we will be pleased to show them to you.

RUBBERS—Wet weather reminds you of Rubbers, and we wish to remind you that we have our full stock now in of FIRST QUALITY RUBBERS. We do not buy a pair of seconds or imperfect Rubbers.

J. D. CLIMIE 30 AND 32 KING WEST

The Right House

14c Glass Cloths at 10c
Hemmed and Lettered Glass and Tea Cloths; good useful size; fine lintless weave and excellent absorbent quality; fast colors; red or blue border. Regular good 14c quality; from 9 to 10 o'clock Friday morning we will sell them at ... 10c

Cashmere Stockings 28c
Ladies' Black Cashmere Stockings; Fall weight in excellent all-wool quality; double reinforced heels and toes; guaranteed fast black dye. These are genuine RIGHT HOUSE value at the ordinary price of 35c; Friday from 9 to 10 on sale at ... 28c

Up to 25c Embroideries 5c
Some of the most sensational Embroidery values we have ever offered. New Embroidery edges in 2-inch to 9-inch widths; fine muslin and cambrie goods, in eyelet and blind designs; good reliable wearing qualities, suitable for underclothing and other purposes. Just in time for Fall sewing needs. Regular good values up to 25c, from 10 to 11 Friday all at ... 5c

25c to 50c Veilings for 13c
To help make things interesting Friday we throw into one strenuous Hour Sale this entire lot of beautiful Paris Veilings; they are in smart new styles and latest meshes, including new double thread effects in black, brown, navy, green, gray, magpie. Regular good values at from 25c to 50c per yard, Friday from 10 to 11 on sale at ... 13c

85c Worsteds Suitings 39c
Stripe Worsteds Suitings; two stylish shades of Burgundy and wistaria only; 46-inch width. This is an extraordinary value, and those who want some would do well to be prompt. Regular good 85c value, Friday from 11 to 12, at ... 39c

Net Lace Waists \$2.49
Point d'esprit Waists, ecru shade, daintily trimmed with panel of alternate rows insertion and tucking, edged with colored soutache braid down centre front. Be sure and see these. Excellent value at \$4.50; Friday, from 11 to 12, on sale at ... \$2.49

Two Big Second-floor Values
Tailored Suits
Very special and extensive showing of Tailored Suits, in fine variety of stylish designs; brown, garnet, grays, black or navy; smartly trimmed with buttons and moire silk. Skirts are in the new smartly pleated styles. All made of pure wool suitings. In ladies' and misses' sizes. Good \$20 values, our very special price, \$15.00.

Two Big Third-floor Values
30c Floor Oilcloth 22c
One thousand yards Floor Oilcloth, in light and dark color effects; floral, block, tile and parquette designs. Comes in different widths—2 yards wide, 1½ yards wide, 1¼ and 1 yard. Regular good value at 30c per square yard; will be on sale all day Friday only at 22c per square yard.

\$1.60 Cotton Blankets \$1.29
Our Homefurnishing Department has put in no less than one thousand pairs of these very popular Flannel-ette Blankets. These are good warm medium weight Blankets and must not be confused with thin flannel-ette sheets. In the largest double bed size (12-4), white or gray, with neat border. Good \$1.60 value, our price only \$1.29 pair.

THOMAS C. WATKINS HAMILTON ONTARIO

THIRTEENTH SON.

He is Also the Seventh Son of a Seventh Son and a Judge.

Atlanta, Sept. 27.—Judge Richard B. Russell, of the Georgia Court of Appeals, became father again for the thirteenth time to-day.

The baby is a boy with a proud record behind him, for he is the thirteenth child of a thirteenth child of a thirteenth child on his mother's side and the seventh son of a seventh son on the side of his father.

What name this youngest of the Russells will bear is a decision which the court has not yet handed down, for it is no easy matter to name a thirteenth child, let alone a thirteenth child of a thirteenth child and a seventh son of a seventh son.

Judge Russell was a candidate for Governor against Hoke Smith when the latter was nominated some years ago, and he urged people to support him as he needed office because of his numerous progeny.

STARTED FROM BRAZIER.
Plumbers' Repair Kit Caught Fire at Parliament Buildings.

Toronto, Sept. 30.—The origin of the fire which recently destroyed the western wing of the Parliament buildings has been officially determined.

"The Government has investigated the source of the fire," said Sir James Whitney, when interviewed yesterday, "and there is no doubt whatever that it was caused by the charcoal brazier, left among the rafters by repairing plumbers. The Government has had good reasons for coming to that conclusion."

In reference to efforts made to extinguish the fire," continued the Premier, "I may state that, in the opinion of men qualified to know, the whole building would have gone but for the efforts of certain Government officials, who constituted themselves firemen and combated the flames. I am glad to make this statement to their credit."

EXONERATED CREW.
Inquest on Alex. Todd, Who Met Death on Track.

Igersoll, Ont., Sept. 29.—The most important evidence touching the death of Alexander Todd, the Beachville man killed on the C. P. R. here Monday night, was given by Hugh Cameron, of West Toronto, the engineer who was at the throttle when the fatality occurred. He told the coroner's jury that he saw Todd on the track and he sounded warning. At one time, he said, he thought the unfortunate man attempted to get off the track, but he staggered and lurched towards the centre of the track. Witness said he then applied the emergency brake, and although the train stopped within six or seven car lengths, the distance was too short to save the man's life.

The jury returned a verdict to the effect that the deceased came to his death while walking on the C. P. R., and that they believed that the train crew did all in their power according to their judgment to save deceased's life.

Back to Prison for Morse.
New York, Sept. 29.—Unless some legal loophole is discovered, Chas. W. Morse, the convicted financier, will have to go back to the Toms, owing to a lapse of two days between the expiration on October 9 of his bail bond of \$125,000 and the calling of his case before the United States Circuit Court of Appeal on October 1.