

CHAPTER TEN

The Grand Jury proceedings were held on November 20, 1919. Prosecutors presented their evidence to the jurors, who returned a true bill against the defendants. Thus, the eight accused strike leaders – Bill Ivens, Bob Russell, Dick Johns, John Queen, Abe Heaps, George Armstrong, Roger Bray, and Bill Pritchard – were all committed to trial.

The next day, the men stood in courtroom No. 1 at the Winnipeg Law Courts building to be arraigned. Justice Thomas Metcalfe of the Manitoba Court of King's Bench was assigned to be the trial judge. To a large extent, the defendants' fate would be in his hands. The men and their counsel eagerly discussed his reputation.

Justice Metcalfe had worked as a law student in several small country towns before moving to Winnipeg. He entered into several partnerships with other lawyers until he was appointed to the bench in 1909. On the bench, he displayed an ability to handle points of law that were a revelation even to friends who knew him well. He was quickly regarded as an able judge and enjoyed lecturing at the law school. With his whimsical humour and jolly nature, he was generally admired in the legal profession, despite occasional fits of bad temper and biting sarcasm. He was a member of the exclusive Manitoba Club and the Carlton Club, resided in the posh River Avenue area, and polo was his primary form of recreation.

Justice Metcalfe sat at the judge's bench facing the defendants. The counsel were seated in front of the defendants at two separate but adjoining tables. In those days, the courtroom was dimly lit. A small green-shaded lamp burned constantly at the judge's elbow and revealed little of his features or expression, save the occasional smile. Small reading lamps burned throughout the day at the counsel tables, soft beacons of light in the dimness of the room.

The men heard the full extent of the charges they were facing. The verbose, twenty-seven-page indictment took Fletcher McDonald, the court registrar, fifty-seven minutes to read. The following extracts provide a summary of the charges:

The jurors for our Lord the King present:

1. That William Ivens, Richard J. Johns, Robert B. Russell, William A. Pritchard, John Queen, A.A. Heaps, George Armstrong and R.E. Bray in and during the years 1917, 1918 and 1919 at the City of Winnipeg, in the Province of Manitoba and elsewhere in the Dominion of Canada did unlawfully conspire, confederate and agree with one another and with other persons, to the jurors unknown, to carry into execution a seditious intention, to wit: to bring into hatred and contempt and to excite

disaffection against the government, laws and constitution of the Dominion of Canada and [...] the Province of Manitoba and the administration of justice and also to raise discontent and disaffection amongst His Majesty's subjects in Canada and to promote feelings of ill will and hostility between different classes of such subjects, and in particular between that class of His Majesty's subjects consisting of workmen and employers and that class of such subjects consisting of employers of labour and other persons not being workmen and employer, and were thereby parties to a seditious conspiracy.

2. And the said jurors do further present that in furtherance of this object, the accused convened the Walker Theatre meeting and the Majestic Theatre meeting, aided and abetted the holding of the Calgary conference, aided and abetted the publication of seditious literature and assisted in calling the general strike in Winnipeg in May, 1919, which usurped the functions and powers of government in Winnipeg and dictated to the inhabitants the terms on which they could carry on business. [The parades and riots of June 10 and June 21 were then described as a further stage in the conspiracy.]
3. That the accused conspired to carry into effect a seditious intention, to wit: an unlawful general strike.
4. That the accused organised an unlawful combination of workmen and employees to compel compliance with their demands by means of an unlawful general strike which was intended to be a step in a revolution against the constituted form of government in Canada.
5. That the accused conspired to form an unlawful combination in order to obtain control of all industries in Canada and to obtain property rightfully belonging to other persons.
6. That the accused conspired to introduce in Canada by unlawful means the Soviet form of government, similar to that in force in Russia.
7. That the accused, by encouraging the general strike, conspired to commit a common nuisance, because the general strike endangered the lives, health, safety, property and comfort of the public and obstructed the exercise and enjoyments of rights common to all of His Majesty's subjects.

Once the indictment was read in full, the registrar asked, "How say you, guilty or not guilty?" But a plea was not entered. Instead, Cassidy asked for an adjournment until Monday. He explained to the judge that the defendants could not plead without more time to carefully review the lengthy indictment. The motion for an adjournment was granted.

On Monday, November 24, Cassidy moved to quash the indictment. Justice Metcalfe heard the argument in the judges' library on the second floor of the Law Courts. Cassidy took the entire morning to present his argument and challenged the validity of the indictment: "Let them charge us with a certain act, not with the general charge of seditious conspiracy [...] and then drag in things that happened in Winnipeg to throw a lurid and unfair light on the trial [...] nothing but an unfair trial could result from this indictment." Among its many defects, he added, it was a "sleep-producing" document.

In the afternoon, Andrews argued the validity of the indictment. Once both arguments had been heard, Justice Metcalfe ruled that the indictment was valid and refused to quash it.

Once again, Cassidy sought an adjournment of the case against the eight men and asked that the Crown first proceed against James Woodsworth and Fred Dixon, who had only been charged with seditious libel. Cassidy believed that there would be a better chance of acquittal for these two men and knew it would be psychologically advantageous to start the trials with a win. However, Justice Metcalfe ruled that the trial against the group of strike leaders would begin as scheduled.

When the trial opened on November 26, Cassidy informed the court that Pritchard was ill and confined to his home. He produced a medical certificate as proof. As a result of Pritchard's absence, Cassidy requested a postponement until the following Monday, but this was not granted. Instead, Pritchard's doctor was brought to court to describe Pritchard's weak condition. Unmoved by the doctor's testimony, Judge Metcalfe ordered Pritchard to appear in court for the afternoon session.

Jury selection began in the afternoon. An exceptionally large jury panel had been summoned and, from this group, twelve jurors were to be chosen. A series of arguments arose over peremptory challenges.

A peremptory challenge is the right to challenge a juror without stating a cause. The number of peremptory challenges allowed to the accused is determined by the severity of the penalty. The *Criminal Code* states that a defendant is entitled to four peremptory challenges when charged with a crime that carries a penalty of less than five years. Cassidy argued that each man was entitled to four peremptory challenges for a total of thirty-two challenges for the group. Alternatively, Cassidy asked that each man be given four peremptory challenges for each of the seven counts, for a total of twenty-eight challenges per person. In contrast, Andrews stated that the men should have the same number of challenges that a single accused might merit — four challenges for the group.

The argument continued at length, but Justice Metcalfe would make no decision at this time. He explained that the wording of the *Criminal Code* left

the issue unclear. The argument was a bit premature, since the defence had not yet begun to use its challenges. Therefore, Justice Metcalfe would decide the issue if and when the situation arose.

Then Andrews made an announcement that shocked the courtroom. He declared that each man would be tried separately, and the Crown would begin with Bob Russell. No one had anticipated this sudden change of events.

There were many advantages to Andrews proceeding this way. Whatever went poorly in the first trial could be corrected at the next. And even if he lost, only one accused would be granted his freedom. Using this his strategy, Andrews could learn from his mistakes and would get more than one attempt to convict.

The selection of the jury to decide on Russell's fate began immediately. When Court adjourned, only three out of twenty-five jurors called had been sworn. Challenging one juror for cause on the next day, McMurray asked, "Did the strike cause you loss?" Andrews objected and the objection was sustained, causing McMurray to use his fifth peremptory challenge. The time had come for Justice Metcalfe to make a ruling on the matter, and he announced that the defence was entitled to only four peremptory challenges. The decision was not surprising. Because Russell was being tried alone, there was no legal basis for providing him with more.

Russell conferred with his defence counsel. Since the charges had been laid, the penalty for sedition had been increased from two to twenty years. A twenty-year penalty entitled a defendant to twelve peremptory challenges. With Russell's approval, Robert Cassidy made a daring request that Russell be tried under the amended section and that he be granted twelve peremptory challenges instead. But the Crown argued that the amendment was not retroactive. Justice Metcalfe maintained that only four challenges would be allowed.

How wise was it for the defence counsel to want to open the doors to a much heavier penalty in exchange for eight extra challenges? The jury panel was made up primarily of farmers, and farmers had been greatly inconvenienced by the strike and had no acquaintance with labour unions. The gamble showed just how fearful the defence was of the jury panel.

After the twelfth juror was sworn in, Justice Metcalfe addressed the jury. He explained that the nature of the case required that they be locked up throughout the trial. In response to this announcement, Cassidy told Justice Metcalfe that these severe measures were not the wish of the defence team. In an instant, Andrews was complaining. He keenly resented any remark by the defence counsel from which it could be assumed that the Crown was placing undue hardship on the jury. Justice Metcalfe had the final word on the matter:

It may be that Mr. Cassidy is trying to impress something upon you, gentlemen of the jury [...] I highly resent the by-play of counsel for the Defence in trying to make the jury believe he is a good fellow.

I believe this to be a highly important case. It is highly important to the state. I consider it to be one of the most serious cases I have tried. When I find that people on the street do not hesitate to speak to me about a case I have reason to believe that much more so will they approach the jury.

I have taken it upon myself to lock you up and I hope you will appreciate the fact that in doing so I am only doing my duty. I am taking my chances of any one insinuating that I am harsh. We will sit every day and every night until this trial is finished.

With those words, the judge signalled the Crown to open its case.

CHAPTER ELEVEN

Russell's trial began on November 25, 1919. Alfred Andrews rose to deliver the opening address for the Crown. Short in stature, with *pince-nez* perched on his snub nose and a double chin barely clearing his legal collar, Andrews had the appearance of a benevolent uncle. With kind eyes and a disarming manner, he belied his reputation as a leading lawyer capable of commanding impressive legal fees.

"State trials have been very rare in Canada," Andrews began. He spoke of the grave responsibility laid upon him on behalf of the people of Canada. And, although it was not his function, he attempted to define sedition to the jurors and outlined the types of conduct that constituted seditious conspiracy.

Andrews challenged Bob Russell's character and political activities. He asked that the jurors consider whether the defendant had acted as a good citizen during the "discontent that followed as an aftermath of the war" or if he had instead "welcomed these conditions as fallow ground on which to sow the seeds of further discontent?" Then Andrews identified two classes of socialists in Canada, the right-wing and the left wing, explaining that the Socialist Party of Canada, to which Bob Russell belonged, was a left-wing party. According to Andrews, left wing socialists attempted to create a class struggle in Canada. "If the evidence proves that the accused and his associates endeavoured to place class against class, the Crown will be entitled to a verdict of guilty," he instructed.