

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.

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## 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.

In addition, Andrews accused Russell of being involved in a nation-wide conspiracy. He explained that the conspirators contrived to gain control of labour councils throughout the country, sponsored many seditious meetings, and had distributed illegal literature. Moreover, at the Calgary conference, they planned direct action to gain control of all industries by means of a nation-wide general strike. These men, Andrews stated, “attempted to gain control for the Reds and glorified in the name.”

A great deal of the Crown’s opening statements focused on the acts of violence that occurred during the strike. Andrews reminded the jury of how the “terrible conspiracy” led to unnecessary brutality, including the clash of June 10 and the “fearful riot” of June 21. He described how soldiers, some who had received the highest honours on the battlefield (a reference to Victoria Cross recipient Sergeant Coppins), were “kicked and cuffed” during the clashes. He reviewed the events, the damages done, and the hardships suffered. “He who sets the fire and fans the flame should suffer from the conflagration,” he concluded.

Sergeant Francis Edward Langdale was the first witness to take the stand for the prosecution. Now a country lawyer, he gave evidence that had been collected while working for the Military Intelligence Department of the Canadian Army. In detail, he described what he saw and heard at the Walker and Majestic Theatre meetings, as well as the Calgary conference.

As Langdale testified, Cassidy objected, arguing that the meetings were irrelevant and could not be connected to Russell’s charges. In response, Justice Metcalfe asked Andrews to show the relevance of his questioning. Andrews stated, “I would suggest this, My Lord, it is impossible to prove out of one witness all the facts.”

Justice Metcalfe accommodated the Crown. “We will clean up everything as we go along. I will give you every opportunity for standing aside witnesses and recalling them,” he told Andrews, applying the “wide-net theory” often used in conspiracy cases. The Crown would, in effect, be allowed to introduce a wide range of evidence to establish the existence of a conspiracy. The court would later determine what was relevant and what was not.

Sergeant Langdale was asked to stand aside. As a result, the defence’s cross-examination was postponed, allowing the Crown to build up evidence unchallenged.

Thomas Lee Peters, chief inspector of the Loan Department of Osler Hammond and Nanton Company, gave his testimony next. Andrews questioned him about his experience at the Walker Theatre meeting:

ANDREWS:                    How did you come to attend that meeting, Mr. Peters?

- PETERS: I happened to see a notice of it in one of the daily papers and I went there purely out of curiosity. I had never attended any meeting like that before.
- ANDREWS: You didn't take any notes of the meeting, I understand?
- PETERS: None whatever.

In his recollection of that meeting, Peters told the court what he heard Russell say about Russia at the Walker Theatre meeting in December 1918:

- PETERS: [Russell] led up to a certain point, and then said, 'Oh, they said that blood is running in Russia,' and he said, 'yes, and blood will run in this country from the Atlantic to the Pacific, or we will get our rights. We are willing to wade in blood to obtain what we claim to be our rights.'
- ANDREWS: Now, Mr. Peters, what effect had those speeches upon yourself?
- PETERS: Very depressing.
- ANDREWS: Why?
- PETERS: There were also general statements made that the homes in Fort Rouge [one of the more prosperous neighbourhoods in Winnipeg] would eventually be good homes for the Soviet leaders. I don't want to lose mine. The tenor of the speeches was very extreme. They [...] would have a distinct tendency to encourage men, if occasion arose, to very extreme measures. I would say a tendency to riots, anything at all.

Subsequently, Alfred Andrews tried to elicit from Peters his opinion as to the probable effect of such speeches on returned soldiers, but Cassidy objected and his objection was upheld. Andrews tried again to the same effect. Defeated, Andrews replied, "I will not press the matter with this witness until I get authority."

Arguing points of law was not Andrews' strength. Rather, he relied on his grasp of facts and depended on emotional appeal. He never did bring any authority and abandoned the point.

Andrews did not stand Peters aside and, for the first time in the trial, defence counsel was given the opportunity to cross-examine. McMurray opened by asking Peters to restate the content of each resolution. Ostentatiously impressed with the answers, McMurray continued, "You seem to have those almost perfect." Then, using the transcript of the preliminary hearing, McMurray showed that Peters could not remember his own earlier testimony: "You can't remember what you said here six months ago, and yet you can remember what was said in the Walker Theatre twice as long ago?" McMurray compared Peters' damning evidence in court with the less extreme version he gave under oath at the preliminary hearing: "Yes, and blood will run in this country *if necessary* from the Atlantic to the Pacific' Why did you leave out tonight the words 'if necessary?'" In response to counsel's question, the witness reiterated that he had not taken any notes at the meeting.

Similarly, Peters did not discuss the reference to the homes in Fort Rouge at the preliminary hearing. Why were new and important statements returning to his memory now, if they were not worthy of mention at the preliminary hearing? On this matter, Peters explained that the recollections had come to him only that night. "Is your memory getting better as time goes on?" McMurray challenged.

The next Crown witness was Ben Batsford, a talented cartoonist for the *Free Press*. Pitblado questioned Batsford about the radical speeches he heard delivered by Russell at the Walker Theatre meeting. The witness told the court:

Russell said 'The truth had not been told about Russia' and that false reports had been deliberately fabricated 'as a propaganda to get Russia in wrong with the world.' He [Russell] said there was a change coming and nothing could stop it. The working people were about to assert themselves.

This testimony substantiated Sergeant Langdale's account of the Walker Theatre meeting.

In addition, Batsford had received a copy of the *Socialist Bulletin* at the Walker Theatre meeting, and it was identified and marked as an exhibit. Holding the exhibit in his hand, Pitblado read the last page to the jurors: "If you are interested in having literature of this kind distributed or would like a bundle of every issue, send your donation to R.B. Russell, Room 14, Labour Temple, Winnipeg." Cassidy objected to Pitblado's strategy: "There is nothing here relevant to the charges against the accused." But Justice Metcalfe allowed

the Crown to continue until, after reading several articles, Pitblado put the paper down.

When the readings were finished, Pitblado attempted to question Batsford on the two days of rioting that followed the Market Square meeting. Once again, Cassidy was on his feet objecting to the line of questioning. He argued that the Crown had not shown that the riots were in any way connected to Russell. As permitted, Pitblado stood the witness aside and recalled Sergeant Langdale to describe the riots in more detail.

According to Langdale, Dick Johns announced the Market Square memorial meeting for the slain Spartacists at the Majestic Theatre meeting, not Russell. But the Crown tried to establish that the riots occurred in response to the calling of the Market Square meeting, which had been announced by one of the “conspirators.” According to Justice Metcalfe, this made the evidence relevant to the accused.

Once Langdale had testified on the matter, Batsford was recalled. Pitblado asked him to describe the character of the audience at the Majestic Theatre meeting:

BATSFORD: My observation was – my guess was that there were about seventy-five percent foreigners.

PITBLADO: Are you guessing as to there being foreigners there?

BATSFORD: No. Seventy-five percent is the number of foreigners there. That is my estimate.

Cassidy repeatedly objected to the evidence. Again, there was no connection to Russell and no evidence that the meeting was seditious, but Justice Metcalfe ruled in favour of the Crown:

METCALFE: I am not sure that the calling of a meeting out of respect to dead socialists in Germany is not seditious.

CASSIDY: Sedition only refers to our own country and our own government, My Lord.

Despite Cassidy’s correction, the judge permitted Pitblado to continue:

PITBLADO: From what you heard at the meeting at the Majestic Theatre and from what you saw [...] what connection had the [...] happenings [riots] with the meeting?

BATSFORD:                   The returned soldier [...] had no love for foreigners or aliens, and if he saw anybody or any organisation organising the aliens in Winnipeg [...] he would be against such an organisation.

Despite numerous efforts, a direct link between Russell and the riots was never established.

James Bowes Coyne played an important role as one of the assistant Crown counsel in these prosecutions. He was a skilful lawyer and a handsome man with a warm and outgoing personality. He had also been one of the key members of the Citizens' Committee of One Thousand. He was forty-one years old and, in later years, would go on to become a judge in the Court of Appeal and the father of several children well-known for their scholastic achievements.

Coyne called Robert Howell to give his evidence. Howell was one of the RNWMP officers who raided the home of Joseph Knight in Edmonton. It was this testimony that began to expose weaknesses in the defence:

COYNE:                        Did you get anything at that house?

HOWELL:                     I did, sir.

COYNE:                     Well, will you look at these documents?

At this point in the testimony, Cassidy interjected:

CASSIDY:                    You might show these to me.

COYNE:                     These were in at the preliminary.

METCALFE:                 Mr. Cassidy has said there are many things in the preliminary he has not seen.

CASSIDY:                    The fact is, I read the first 500 pages and came to the conclusion that would do for the present; for instance this is [on] page 828.

This was a shocking admission.

Cassidy was already at a disadvantage for not having attended the preliminary hearing. Having not been present, he did not hear the evidence given at the preliminary hearing and did not have an opportunity to study the witnesses. Here, he was admitting that he had not read the greatest part of the evidence now being presented in court and, therefore, was not properly

prepared to conduct a cross-examination. If he chose to cross-examine the witness, it was inevitable that he would be taken by surprise. Moreover, with the lengthy sitting of court, there would be no time to read the document now. Not surprisingly, when the witness concluded, Cassidy declined the opportunity to cross-examine.

Staff Sergeant Albert Edward Reames, the man in charge of the Intelligence Department of the RNWMP in Winnipeg, was the next man called to testify.

Reames introduced many publications into evidence, and Cassidy's objections and frustration escalated. *The Red Flag* and a booklet called *Socialism: Utopian and Scientific* by Friedrich Engels became exhibits. Cassidy launched an unsuccessful protest:

CASSIDY: I must take the objection that we are not responsible for socialistic literature, even though it is sold at the meetings.

METCALFE: From now on [...] any Socialist propaganda that points out how to proceed against law and order is relevant.

This ruling allowed the Crown to introduce masses of propaganda into evidence. Despite the fact that no obvious connection could be made to the accused, the sheer volume of the material must have had an impact on the jury.

During cross-examination, Reames, who had rioted with the patriotic soldiers in his undercover capacity, vividly described the break-up of the Market Square meeting and the events that followed:

The City Police tried to protect people from being beaten, but they were absolutely powerless. They were too few [...] We then marched north of the CPR subway, stopped motor cars that appeared to have men of foreign birth in them, stopped the Winnipeg Electrical cars, held them until such time as they were searched by the patriotic soldiers. Any man that looked like a foreigner was taken from the car, made to show his naturalisation papers; if he could not produce them, he was beaten up. We then went from there into the North End of the city where a building was pointed out to the returned men as being, I believe the Austrian and German Club [...] they smashed up everything [...] they threw the piano out of the window; most of it was carried away as souvenirs by the returned men, the legs of the piano being used as clubs.

Over Andrews' objections, Cassidy tried to find out the policy of the City Police and RNWMP regarding riots. Justice Metcalfe cautioned the jurors:

Mr. Cassidy wants to make an impression that there was one riot in which the authorities did not intervene [the rioting of the patriots in Market Square], and another riot in which the authorities did intervene [the Bloody Saturday riot]. I fail to see the relevance, at the same time I am going to allow you [Cassidy] a pretty wide latitude.

Cassidy next endeavoured to demonstrate that the Majestic Theatre meeting was quite lawful. When he suggested that there was nothing wrong with socialists voicing their views, Justice Metcalfe replied, "I am not so sure about that." Once again, the judge's commentary was damaging.

The next day, the Crown called one of their most important witnesses, William Percy. He was on the stand the entire day. Percy had been a railway clerk in the Grand Trunk Pacific freight yards and a delegate from the Brotherhood of Railwaymen to the Winnipeg Trades and Labour Council. He was a striker, who had later turned against the strike. Although he had been a member of the Strike Committee, he had a low regard for most of the defendants, viewing them as revolutionaries. The strike leaders, in return, regarded Percy as a turncoat and traitor. Percy was bitter about the strike because, when the strike was over, he did not get his job back.

Percy's testimony was damning. When asked to explain why he transferred his loyalties, the witness told the court that after the June 10 memorial meeting at Market Square and the subsequent riot, he became suspicious and left the Strike Committee. He believed that "the Red element" was gaining control and misleading the labour unions. In questioning, Andrews elicited from Percy a graphic picture of the Strike Committee's activities. He told who the "big five" were in the Strike Committee, and Bob Russell was among them. In addition, Percy explained how permission was granted for some Strike Committee activities and how the censorship of telegrams worked. George Armstrong was one of the censors. It was at this point that Andrews held up a card with the words "By Authority of the Strike Committee." Percy identified the card as authentic, and it was placed in evidence as an exhibit. Furthermore, several letters were identified and entered as exhibits.

Andrews then turned his attention back to the socialist literature, specifically the *Strike Bulletin*. Percy remained in the witness box while Andrews read excerpts from articles to the jury. Cassidy repeatedly objected to the way in which Andrews read excerpts out of context:

CASSIDY: Do I understand Your Lordship to rule that when my learned friend reads an item he can take a piece out of the middle and not read any qualifying statements?

METCALFE: If there is something there that is unfair I have repeatedly ruled, that you may make note of it, and in presenting your case you may make mention of it to the jury.

Metcalf reminded Cassidy that he would have his chance to read from the *Strike Bulletin* at a later time. Unsatisfied, Cassidy refused to cooperate and the tension escalated into serious conflict between judge and counsel.

Cassidy was determined to undo the damages being done by the Crown. Rather than reading from the *Strike Bulletin* during his cross-examination, Cassidy defiantly read aloud the omitted passages overtop of the reading provided by Andrews. As a result, Justice Metcalfe threatened to remove Cassidy from the courtroom:

METCALFE: I shall call a bailiff if you persist [...] Send for the bailiff. Can't I have a bailiff in this Court?

CASSIDY: I shall go if you like.

METCALFE: Yes, but the court will go on.

CASSIDY: Well, call the bailiff. I'm ready for my bed anyway.

Metcalf was furious. Eventually, Cassidy backed down and sat in silence until the session was adjourned. But the conflict was not resolved and would soon resurface.

The following morning, William Percy continued to give his evidence. Again, Andrews read to the jury and, like the previous day, Cassidy objected. Metcalfe was peevish and a wrangle ensued until Metcalfe called for the sheriff. Cassidy foolishly insisted that if he were forcibly taken out of the courtroom, he would apply for a writ of *habeas corpus* to get back in.

If Cassidy was serious in making that statement, he was demonstrating his ignorance of the law because the incident would be a preposterous use of this court petition. After a short interval, the bewildered sheriff appeared. He was instructed to sit in a chair near the judge and told "to remove instantly from the room anyone who defied a court order in future." The entire scene was highly unusual.

Under Cassidy's cross-examination, Percy conceded that the Quebec convention was merely a labour meeting in which Bob Russell attended as a delegate. Likewise, he admitted that there was nothing "Red" in the scheme to form an industrial union for the whole of Canada. And, as for the Strike Committee and its powers, Percy agreed that the committee had no definite

powers and was required to report to the General Strike Committee. He also conceded that neither the strike nor its “unfortunate results” could be attributed to Russell.

In addition, Cassidy questioned Percy on Senator Robertson’s accusation that Bolshevik funds had been received to help finance the strike. Although he had served on the strike’s finance committee, Percy admitted that he had heard the charge, but had no knowledge of such funds. Finally, the defence was making strides, but this would not last long.

When the cross-examination was finished, Andrews re-examined Percy. His line of questioning quickly re-established the Crown’s advantage:

ANDREWS:           When you said you did not blame Russell for the strike, Mr. Percy, what did you mean?

PERCY:               When I said I did not blame Mr. Russell for the strike, I meant that once the strike started, the General Strike Committee must take and accept the responsibility. I do blame Russell, however, and the other men of his calibre, for misleading the labour unions as a whole. As I look back now, I believe the labour unions were used by the so-called Red element for their own purposes.

The statements successfully placed responsibility back onto Russell for causing unrest within the ranks of the labour movement.

As a result of the earlier ruling allowing the Crown to place numerous documents into evidence, the mountain of paper before the jury was remarkable. Some pieces of evidence garnered more attention than others. For example, Andrews introduced a letter written by Russell. The letter stated that Russell had just received a shipment of Bolshevik funds consisting of \$250 from a miners’ union. Was this the evidence that Senator Robertson was alluding to in his press release on June 20?

J. Edward Bird, an assistant defence counsel, angrily argued that Senator Robertson’s omission in the press release was an injustice to Russell and misleading to the public. Bird charged that a “reputable minister” of the Crown had “deliberately misquoted” Russell’s letter.

In response, Isaac Pitblado defended Senator Robertson: “I object to the statement my learned friend is making. He knows they are entirely improper and uncalled for.”

Justice Metcalfe, however, was not interested in addressing the matter: “We are not trying the government or any minister.” Bird objected to the

reading of the letter without also reading Senator Robertson's "garbled" version, but Justice Metcalfe would not allow it.

The next witness called to the stand was a young RNWMP officer named Corporal F.W. Zaneth. He was a man of two nationalities with many names, faces, and affiliations. His Italian name at birth was Zanetti, but his father changed it to Zaneth in Austria. During his testimony, he unveiled his story of intrigue.

Zaneth described how he had adopted the name Harry Blask and infiltrated the Socialist Party of Canada by posing as an Austrian supporter of the revolutionary International Workers of the World. His police superiors had provided him with an official Wobbly membership card, and he received papers to show that he was a registered alien, exempt from the Military Service Act. This prevented him from being harassed by Dominion Officers searching for draft evaders. He was ideally suited to be an undercover agent among the Italian and Austrian workers in the Alberta coal fields. Thus, Zaneth posed as a miner and joined a Calgary local of the Socialist Party of Canada and rose through the labour ranks to eventually become vice president of his labour union. He succeeded to such a remarkable extent as a credible labour supporter that, when the workers in Calgary went out on a general strike in support of the strike in Winnipeg, Zaneth was actually elected to the Calgary Central Strike Committee. As required, he organised meetings and made secret reports on all his activities to his RNWMP superiors. While undercover, Zaneth attended numerous socialist meetings and conferences, where he helped sell socialist literature, some of which was prohibited by Orders-in-Council. Many of the texts were entered as exhibits in the case.

The most devastating evidence at the trials was given when Zaneth told of a conversation he had with Joe Knight, a prominent Calgary member of the Socialist Party of Canada and a close colleague to Bob Russell, whose name appeared on many of the documents filed in court. Zaneth told the court that he had talked with Joe Knight in Calgary and was told there was going to be a big strike in Winnipeg, with workers coming out in sympathy from Montreal to Vancouver. According to Zaneth, Knight had access to the buildings in which the military stored their rifles and equipment, and he told Zaneth that the government had shipped a carload of rifles to the ordinance Department of Military District No. 13. When this occurred, Knight allegedly told Zaneth that socialists should keep their eyes on the arms because they might need them some day. "I nearly froze to death going over to take a look at them," Zaneth said. This evidence caused a great deal of excitement, particularly when used by the *Free Press* as the basis for a page wide headline that read, "WITNESS INFORMED CARLOAD OF RIFLES READY." The

sub-heading read, “Sensational Evidence Given by Secret Service Man at Trial of R.B. Russell.” It was an alarming revelation.

When this damning evidence was presented, Cassidy heatedly voiced his objection. “Why wasn’t this ruffian Knight arrested?” he stormed. “Why is he walking the streets while Russell is in the prisoner’s dock? Why wasn’t he indicted too? The witness should not be allowed to go into this stuff about guns. Why wasn’t there a charge laid against Knight?”

Although Cassidy raised a valid point, Andrews argued that the evidence was relevant because Knight and Russell were both members of the same party and active workers in the OBU. Cassidy, however, was not satisfied and continued to press the issue with Justice Metcalfe:

CASSIDY:                    If you do not rule out the mass of evidence not connected with the accused we will not have a fair trial.

METCALFE:                I am very glad to be told my duties, Mr. Cassidy. I am very glad to be told that I am not doing my duty. Proceed, subject to Mr. Cassidy’s objections.

CASSIDY:                    Unjust.

METCALFE:                The other time I was unfair, this time I am unjust. Proceed.

CASSIDY:                    My Lord, I must insist that this is an outrage [...] You wouldn’t hang a cat on this evidence.

METCALFE:                This time I’m guilty of an outrage. Proceed.

A short while later, the argument continued:

METCALFE:                Is this trial getting on your nerves?

CASSIDY:                    No, it’s not getting on my nerves, and I’m not going to quit until I have gotten a verdict of acquittal from that jury.

METCALFE:                Don’t you think you might be relieved of the trial if you charge the judge with being unjust and unfair and committing an outrage? Is that your intention?

CASSIDY: My intention is not to charge you personally, but I do object in the strongest possible way to this evidence.

METCALFE: You don't charge me with incapacity, do you?

CASSIDY: No, I merely wanted to put my objection strongly.

METCALFE: Then I must be either incapable or unjust.

CASSIDY: My submission is that this evidence is not legal and I am entitled to put it as strongly as possible.

METCALFE: I wouldn't tread on dangerous ground too often.

CASSIDY: The accused is on dangerous ground [...] If we are to be held responsible for the statements of every organisation, or of every individual who was ever a member of the Socialist Party, we might just as well send the accused to jail right away.

METCALFE: I now feel that I don't know any law. That being so, I am afraid to take any further risk, but if the Crown will take the risk, it can proceed.

ANDREWS: I will take the risk, My Lord.

METCALFE: Then proceed.

As usual, Cassidy's argument did little to sway Justice Metcalfe and served only to fuel the contention that had developed between the two men.

During cross-examination, Zaneth elaborated on his conversation with Knight regarding the rifles:

CASSIDY: Well, did you report this conversation between you and Knight? Why didn't the government take action against Knight?

ZANETH: Search me. I'm only a corporal and don't know what the government is doing.

Cassidy closed his cross-examination, unable to counteract the damage already done.

Mayor Gray was the next man to be seated in the witness box. He dramatically described the conditions during the strike: “Winnipeg was sitting on a volcano and [...] the peace was only a thin veneer [...] The intimidation was terrific. I received letters threatening my life.” Furthermore, he told the court how the police were under the orders of the Strike Committee and how he feared for his life while reading the Riot Act because the air was “black with missiles.” Mayor Gray told of numerous meetings with members of the Strike Committee, with Bob Russell in attendance most of the time as one of the strike leaders.

It was McMurray who cross-examined Mayor Gray for the defence. For each question posed, like a true politician, the mayor’s answers were elusive:

MCMURRAY: Well now, Mr. Mayor, the men just walked out peaceably, didn’t they? They made no rumpus and the City had light?

GRAY: The light was furnished by the City, though if the strikers had their way we would have been in darkness.

MCMURRAY: Now, everything was quiet wasn’t it?

GRAY: Never before in my life have I seen such intimidation as existed here during the strike.

MCMURRAY: Well, to get back to the strike. Were you not asked and pressed to crush the strike ruthlessly?

GRAY: There were a lot of hot-headed individuals on both sides and all of them offered all sorts of suggestions.

The defence, once again, failed to deliver an effective cross-examination. As a result, the evidence against Russell was mounting.

The next witness was James M. Carruthers, the general manager of Crescent Creamery. Carruthers testified that he wrote to the Strike Committee to point out the great necessity of milk reaching homes daily. He received no answer and, the following day, personally delivered another letter “but again I heard nothing [...] We had no milk at all at the plant. It was a very pitiful sight [...] I saw women, with children, sit down and cry because they could get no milk.”

In addition, Carruthers implied that the strikers used intimidation to ensure compliance with the strike. He explained that deliveries continued until June 4, then:

Notice was served on our engineers to stop work, and the drivers also left. We were left flat again [...] I then took up the matter with the Mayor [...] I asked for police protection if it was necessary [...] We then organised a system whereby we were able to use schools as depots, and with the aid of volunteers, maintained as good a service as possible.

However, the defence would elicit a more favourable interpretation from the witness during cross-examination.

When questioned by McMurray, Carruthers revealed that neither his rigs nor his property were broken or smashed. Also, he admitted that he was a member of the Citizens' Committee. Again, the defence attempted to reveal the membership of this committee, but Justice Metcalfe would not allow this to occur:

- MCMURRAY: Well now, do you know the names of some of the committee?
- CARRUTHERS: Yes, I do.
- MCMURRAY: Well, tell us some of them.
- METCALFE: What! The Committee of One Thousand? Excuse me for a while if you want all those names.

McMurray assured the judge that he only wanted the names of a few committee members and not the whole thousand, but Justice Metcalfe once again ruled not to allow the witness to cite names. Despite further protest from the defence that this was relevant information, Justice Metcalfe remained firm: "We are not interested in the Citizens' Committee."

When Sergeant Major Binning of the RNWMP was called to the stand, the riot on June 21 in front of City Hall was once again the topic of discussion. In his testimony, Binning admitted to ordering the Mounted Police to use their batons and charge the crowd. He described how one officer's horse had become entangled in a fender torn from a streetcar. The horse fell, throwing its rider to the ground. Similarly, two more riders fell from their horses, and the three dismounted troopers were "attacked by the mob." In order to disperse the crowd, Binning said that he had ordered his men to shoot over the heads of the people, but when this was found to be ineffective, he ordered the police to fire low into the crowd.

The cross-examination attempted to stress the officers' disregard for the presence of women in the rioting crowd. However, the witness emphatically denied this point. He insisted that the women had generally withdrawn from

the scene of disorder by the time the shooting began. To the Crown's advantage, Justice Metcalfe expressed a different opinion regarding the issue: "In these days of rioting, when women take on special obligations and assume the privileges of men, they are just as liable to ill-treatment in a riot as men. They can claim no special protection and are entitled to no sympathy. If they stand and resist the officers of the law, they are liable to be cut down." Once again, the point raised by the defence was seriously undermined by the judge's comments.

Wanting to close with impact, the Crown concluded its case with evidence presented by RNWMP Constable William H. McLaughlin. In his testimony, McLaughlin described how he had posed as a striker and spent a lot of his time in and around the Labour Temple, gaining the confidence of many of the strike leaders. While undercover, he collected information from meetings and private conversations, and he came to court equipped with numerous damaging records. For example, he described the strikers' confrontation with Premier Norris in which Robert Bray had threatened the Premier. He testified that Bray had demanded that an act be passed to make collective bargaining compulsory. At another meeting, he charged Bray with saying that the government must vacate or be forced out.

Bray was not the only defendant implicated in McLaughlin's testimony. He recounted the damaging statements made by many of the strike leaders:

Dixon, Ivens, and Queen spoke at a meeting on June 9. Queen had said it was now time for the Socialists to take over all the industries, mines and natural resources of the country. Force, both economic and political, would be used to the utmost to bring the country to the feet of the Socialists.

Although he did not single out Russell, McLaughlin continued to present damning evidence against the group of defendants to whom Russell was closely affiliated

Nearing the end of the Crown's case, Andrews placed a large quantity of letters and documents into evidence. Cassidy objected to the many "irrelevant" exhibits entered by the Crown and the ongoing debate between judge and counsel was rekindled:

CASSIDY:                   The admission of these letters will also be the subject of comment.

METCALFE:               Who will comment?

CASSIDY:                   I will comment in due time.

METCALFE: I hope it will have more effect than your *habeas corpus* [...] Mr. Cassidy, what was your object in saying a few moments ago that you would make my actions a subject of comment?

CASSIDY: It was not your actions, My Lord, it is the evidence I will comment on.

Andrews continued to introduce numerous letters. This time it was Bird who rose to argue:

ANDREWS: The next document I tender, My Lord, is a letter dated February 24 from T. Cassidy to the secretary of the Dominion Executive Council (of the Socialist Party of Canada) in Vancouver and found in Stephenson's possession.

BIRD: I submit, My Lord, that Mr. Russell is not bound by any statements that may be contained in any letters, passing from one outside party to another.

METCALFE: Then you object to this?

BIRD: Yes, My Lord.

METCALFE: Then subject to your objection, it can be admitted [...] Well, gentlemen [of the jury], you must read them and ask yourselves, was there propaganda? Was the propaganda seditious? Was it with good intent or was it with bad intent? If it is not seditious, then put the letters aside, but if it is seditious read the letters to see if there is intent. I would not advise you to use them against Mr. Russell, unless you find he was connected with a conspiracy.

Like Cassidy, Bird was unable to influence Justice Metcalfe and the letters were entered as evidence.

When Andrews announced that the Crown's case was closed, the defence objected on the grounds that one of the RNWMP witnesses, Harry Daskaluk, had not been called. Although Daskaluk's name had been on the list of witnesses, Andrews explained that he had no intention of calling him to testify. Bird insisted that the Crown call the witness and claimed to have information that Daskaluk refused to testify and, as a result, had been jailed by the Crown and threatened with deportation. Bird accused the Crown of

paying Daskaluk \$150 for his evidence, promising another \$350 when the case was completed. The Crown denied the charges, and Justice Metcalfe instructed the defence counsel to bring affidavit evidence and proof of the serious allegations being made. The issue was brought to a temporary close and, turning to the newspapermen present in the courtroom, the judge issued an unusual order: "I order that the motion, made by word of mouth this morning by Mr. Bird, shall not be published in the newspapers." It was not long before the matter resurfaced.

Although notice was short, the defence had its affidavit evidence ready for the afternoon session. However, the judge ruled to keep the motion from the jury, resulting in another heated exchange:

CASSIDY:                   The principle is that the prisoner is to be tried by a jury and [...] they should be here throughout the trial. If anything is going on that might make the jury believe the Crown is not absolutely fair, that is a matter which should be listened to by the jury.

METCALFE:                The practice of sending a jury out of the court at the discretion of the judge has been followed continuously in Manitoba [...] I am here to see that the Crown is fair. Not the jury. If I find the Crown is doing anything unfairly, it is for me to rule upon it, not the jury. In the argument of this motion the jury will remain absent.

Cassidy maintained that Daskaluk must either be put in the box by the prosecution or be made available for cross-examination by the defence.

Following a brief conference among the three defence counsel, Cassidy rose and stated that the defence would assume the responsibility of having a warrant executed to bring the witness to court. Bird produced his affidavit with letters attached as exhibits, substantiating the allegations that Daskaluk was a paid agent for the RNWMP. Bird also had in his possession a message that Daskaluk had written, in broken English, to a friend:

Am writing to let you know that at 10 P.M. I will be behind the bars for not obeying the order [...] as you know all about the journey to Wpg, so I flatly refused to go as I told them its against my nature and my people. I was behind the bars all night last night until 8 a.m. today and I am supposed to go back to 'cell' at 10 P.M. so before I go there I thought to leave this message with the Hotel Clerk [...] Today at the courtroom I was told that they will deport me if I will not go to Wpg, I said alright [...] they only gave me one cup of tea without sugar in 24 hrs. Rotten system and barbaric treatment they use for me [...] Even if they starve me to death, I done one wrong, being forced, but not again.

Yours for Socialism, and better Rights, I remain,  
Harry Daskaluk.

Despite the evidence, the Crown was not ordered to produce Daskaluk as their witness. Unknown to the defence, and despite Andrews' statement, Daskaluk had already responded to the subpoena and was in the building. Regardless, the defence was thwarted once again. And, with this victory, the Crown closed its case.

In a criminal trial, the conclusion of the Crown's case is the cue for any motions the defence may wish to make for dismissal of the charges. Russell's counsel made no motions for dismissal, perhaps in recognition of the certain futility of such an attempt.

When their case concluded, the Crown had entered 703 exhibits consisting of socialist pamphlets, books, papers, and letters selected by the Crown from the thousands of documents seized by the RNWMP during the raids. In addition to printed matter, several witnesses had described important socialist meetings, particularly those preceding the riots and the organisation of the OBU. Another category of witnesses had described the Winnipeg General Strike, its beginnings, its disruption, its inconvenience, and its hardships. Needless to say, Russell knew nothing of a very considerable number of exhibits filed against him, nor of some of the speeches or incidents. But, the charge being one of conspiracy, the judge ruled that all this was admissible.

Andrews wrote several letters describing the effort of Crown counsel to obtain a conviction, including one to Justice Minister Meighen:

For about five months we were at the Court House every morning at 9:00 o'clock and rarely left before midnight, sometimes even later, and were also there almost every Sunday. The Court sat a large portion of the time from 10:00 o'clock in the morning until 10:00 at night, and on several occasions, until 11:00, 12:00 and 1:00 o'clock.

In another letter, Andrews gave due recognition to his legal team and the Mounted Police for their hard work on the case:

I received splendid assistance from Messrs. Pitblado, Coyne, Sweatman, Goldstine and Herbert Andrews. These gentlemen were all not only helpful to me, but worked with me in the most harmonious way without evincing any desire to take a conspicuous part in the trial [...] I received throughout the heartiest support and co-operation of the local government and cannot speak too highly of the effective work done by the Mounted Police.

Andrews was pleased with his performance and, based on the events so far, had every reason to be confident that Russell would be convicted.

The rulings made by Justice Metcalfe on the main issues raised at the trial only added to Andrews' certainty. In defence of Russell's involvement, his counsel attempted to adduce evidence that the main reason for the strike was the issue of collective bargaining. But Justice Metcalfe would not allow the defence to pursue this subject, ruling it to be irrelevant to the matters for which Russell was being tried. Similarly, all efforts to expose the membership and activities of the Citizens' Committee were thwarted. And when evidence was presented to show that Russell and the other strike leaders attempted to settle the Winnipeg General Strike, Justice Metcalfe ruled that, because the strike was unlawful in the first place, these attempts bore no relevance. These three lines of defence were critical to demonstrating Russell's innocence. Without the ability to put that evidence before the jury, Russell's lawyers were severely constrained.

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## CHAPTER TWELVE

Edward Bird opened the case for the defence on December 17, 1919 with a seventy-minute address. As a card-carrying member of the Socialist Party of Canada, he seemed more intent on expounding socialist principles than in building a legal argument. He emphasised the injustices suffered by the defendants in their arrests, criticised the Citizens' Committee's fight against labour, and reproved the dual role of the Crown counsel. Despite his efforts, the opening address failed to introduce a relevant and sound defence for his client.

Bird began his opening statements by merely establishing the context from which the strike was born:

An attack has been made, but as you will see it has been done with a fusillade of mostly blank cartridges [...] We will present statistics to show that the average man with the average family, which is considered a family of three, has got to earn \$26.80 per week in order to pay his budget. We will show that the average man with the average family does not earn this amount per week. Now, I ask you, what is more serious than being in the position of the man who can't pay his budget and who can't meet his obligations? [...] Rebellion is born in the heart of man when he sees a condition, an unjust one, crushing him in a losing fight to secure his just demands. A contagion of unrest was rampant at the time.

With some justification for the strike established, Bird reiterated the ongoing struggle that existed between the Strike Committee and the Citizens'