

amount of reading and sorting to determine which documents should be filed. It is unlikely that Cassidy had done this work.

In addition, Cassidy left his nemesis, Alfred J. Andrews, virtually unscathed. The evidence demonstrated that Andrews played a substantial role in some of the strike events. For example, he participated in the meeting to decide on the notorious permit cards. Also, he was appointed a special representative of the Department of Justice and had many relevant conversations with Russell during the strike. If called to testify, Andrews would try to make damaging statements. However, it is unlikely that the damages would exceed those done by allowing Andrews to escape unchallenged. A skilful and persistent lawyer might well have exposed Andrews to criticism for his conduct and, at best, Andrews may have been forced to withdraw from the case. Why did the defence opt to keep him off the witness stand? Clearly, he should have been questioned, but Cassidy called no further witnesses.

CHAPTER FOURTEEN

In the afternoon, Cassidy rose to deliver his final address to the jury. All eight defendants were present in the courtroom, surrounded by well-known men in the labour movement. Attracted by the unusual proceedings, many of the city's lawyers were also in the crowd. Surprisingly, Senator Robertson was present and took notes while Cassidy spoke.

Cassidy's closing statements lasted three hours and fifteen minutes and displayed his ability as a public speaker. With emotionally charged language, he discussed the issues of the trial in broad generalisations.

At the onset, he explained that a state trial was different from an ordinary criminal trial, placing special responsibility on the court and the jury: "May it please Your Lordship and Gentlemen of the jury. We are assembled here on one of the gravest and most solemn occasions that has ever transpired in the legal history of this country."

Perhaps worried that his ongoing conflict with Justice Metcalfe may have negatively influenced the jury, Cassidy referred to his own controversial role in the trial. He explained how he had made the decision during the early part of the trial to object vigorously to the admissibility of irrelevant and prejudicial material:

It was my misfortune [...] to come into conflict with the learned and distinguished judge, who sits here on the bench. I was under the impression at that time that this evidence would prejudice the minds of the jury. During the progress of the trial I have almost entirely changed my mind [...] I have finally come to the conclusion that all this mass of documents was irrelevant, that it could not eventually be held against the accused, and that the accused has emerged absolutely cleared from any criminal intention as charged in the indictment.

This analysis of his role, produced an interesting self-description:

Now I beg of you not to consider me as an interloper of the outside world endeavouring to do anything which is arrogant and set myself up against the courts. If I am not the leading member of the Manitoba Bar, I am very nearly so. I came here in 1882, and I am today in good standing as a solicitor and a barrister.

This self-assessment was neither accurate nor convincing.

Cassidy was not a leader of the bar in Manitoba. In fact, he was clearly an outsider. More importantly, he was a stranger to Justice Metcalfe and knew little of the judge's characteristics. Not only did he have no knowledge of, or relationship to, the judge, he did not have a relationship with Crown counsel. Cassidy had been away from Manitoba for so long that he was a stranger to many of the province's court practices. Andrews, on the other hand, frequently appeared before all of the judges of the courts in Manitoba, including Justice Metcalfe. Having a good relationship with members of the Bench can often assist counsel in the presentation of a case. In this instance, it can only be said that Cassidy, a stranger to the Manitoba courtrooms, was at a great disadvantage. In essence, he was more irritating than persuasive.

Continuing with his address, Cassidy gave a history of the English attitude toward alleged seditious meetings:

In England seditious meetings are considered a safety valve. England long ago would have become a tyranny and would have been swept aside by a worse revolution than occurred in Russia had it not been for the juries of the land who were the bulwarks of British liberty as you are the bulwark of liberty in this case. There have been more trials in Canada for sedition in the last two years because the government has not had the fearlessness and strength to deal with the situation at large.

He reminded the jury that it was the first anniversary of the alleged seditious meeting at the Walker Theatre on December 22, 1918. On this point, Cassidy declared that the speakers at that meeting were merely a year ahead of their time when they called for the withdrawal of Allied troops from Russia:

What was said there about the withdrawal of Allied troops from Russia is now common knowledge, and today's papers announce that political prisoners are soon to be released and orders-in-council withdrawn [...] Now, I ask you, do any one of you believe that this meeting at the Walker Theatre was held for a seditious purpose? It is simply ridiculous. Just because Samuel Blumenberg with his red tie made some speeches, are the rest of the audience going to be conspirators just because they

didn't throw him out? [...] The Crown has no right to charge conspiracy, as there is not a tittle of evidence to show that such existed.

With this point made, Cassidy was poised to subject the Crown to further criticism.

Cassidy ridiculed the Crown's allegations, describing the charges as "absurd" and "outrageous." Although passionate, his arguments remained vague and he offered no evidence to support his claims:

These men have nothing against them. The charge originated from the representatives of some of the employers, as the only way to end the strike was to throw the leaders of the unions into jail on any old charge at all. It is just like seizing officers of a regiment [...] They were charged under the *Immigration Act* and I say it was a gross injustice.

In response to these statements, Andrews jumped to his feet with a correction:

ANDREWS: The warrants were issued under the *Criminal Code*.

CASSIDY: Very well, I accept my learned friend's statement. There is so much against this prosecution on fairness that we will not quibble about warrants. It has been shown that there was absolutely no seditious intent in the meetings held in the theatres here and the labour meeting at Calgary, and therein is the innocence of the accused proved.

Cassidy artfully used the Crown's objection to restate his earlier point regarding The Walker Theatre meeting, including the lack of seditious intent embodied in such meetings.

Although he touched on several broad topics, the bulk of Cassidy's speech focused on the cause of the strike:

With great deference to my learned friend, an organisation is entitled to strike if it likes. It is also entitled to come to the assistance of another if it likes. There is no law against a general strike or a sympathetic strike [...] Every union voted by an overwhelming majority in favour of a strike [...] It is said in the indictment that this strike was brought about by these men by illegal conspiracy. To say this is the greatest absurdity in the world. The accused is a socialist. There is nothing criminal about that [...] he is a socialist, but that does not say that he conspired to overturn the government [...]

Mr. Russell showed you, I am sure, that he had nothing to do with this strike except as a trades union representative, or a member of the Socialist Party. According to the evidence [...] the strike would have come off even if the accused had been hidden in some crevice of the Himalayan Mountains. It was a general vote of the unions that decided it [...] No one ever went into a witness box who made a more honest, frank,

and straight-forward appearance than Mr. Russell. Mr. Russell and the other accused men didn't conspire among themselves to make workers break their contracts of service. The general strike vote did that.

In closing, Cassidy spoke quietly and chose his final words with great care:

I am glad to think and know we will all be home for Christmas. It is now for you to determine, and I have the utmost confidence in you. So has the community. I am satisfied that you will regard only the evidence that has a direct bearing on this case and that you will 'true deliverance make' according to your oath [...] I thank you for your attention and beg of you to give the case the consideration it deserves so that when you go home for Christmas you will not have the feeling that you have done wrong and that you may know that you have vindicated the right of the jury, and the right which is always in British courts of justice to do right according to the evidence [...] It wouldn't make for the reputation of Canada, gentlemen of the jury, if you were to find this man guilty of the charge of seditious conspiracy on the evidence the Crown has produced.

These sweeping emotional statements gave the illusion of great momentum, but they were far too general to challenge the Crown's evidence in a meaningful way. He did not seem to fully appreciate the ramifications of the charges against Russell. Russell was not simply being tried for precipitating the Winnipeg General Strike. Rather, the charges against him were for a course of conduct that covered many years; it was an alleged nation-wide conspiracy. Although his colourful approach held the attention of the entire courtroom, it failed to subject the Crown's evidence to much needed critical analysis.

At the close of Cassidy's address, the court announced that there would be no evening sitting. The jury would be given an evening of relaxation, namely a program of Scottish songs and jokes with Harry Lauder at the Walker Theatre. His Lordship spent the evening polishing his charge to the jury. Andrews would give his address on the following morning.

The next day, the OBU reported that Senator Robertson visited Justice Metcalfe in his chambers after the court recessed. King's Bench and Court of Appeal judges were, like today, appointed by the federal government. To have the federal Minister of Labour visit a judge in the midst of an important trial is highly improper. It is known that Senator Robertson travelled to Winnipeg to attend the trial and that he was in the courtroom. What could he have said to the judge in such a meeting? Of course, the federal government had a great deal at stake in these trials and could be exonerated or condemned for its heavy actions.

Interestingly, when the report was released, neither the senator nor the Crown provided an official denial. Did the incident really occur? If so, the meeting should have invoked a thunderous response from the defence counsel. A report was only printed in a single news bulletin, and a diligent

search for additional reports failed to confirm the incident. If true, how could this event quietly slip past the outrage of the lawyers or, for that matter, the sensational headlines of the newspapers? Why was there no public outcry for the resignation of the minister for the Crown? The truth will likely never be known.

On December 23, Andrews started his address to the jury. He rose to his task like a musician to his instrument, certain of his score and his audience. His performance revealed years of training and countless hours of preparation. He spoke for almost six hours, at times flattering and at times threatening, appealing to the jury's loyalties and playing on their fears. It was sheer bravura.

It was necessary for Andrews to address the defence's attack on his character. In doing so, he described his role as Crown prosecutor:

This is not [...] a battle between the Crown and the accused [...] This is an inquiry by you, gentlemen, into the guilt or innocence of the accused [...] I am not here, leader of the forces of the Crown, to hound him to justice. I am here to assist you gentlemen in sifting this evidence [...] and it is my purpose to present that evidence before you in as impartial a light as my capacity enables me to do.

With his introduction complete, Andrews launched a scatter-shot attack, firing the ammunition that had been prepared by Pitblado.

Isaac Pitblado had supervised and directed an army of researchers made up of university students, RNWMP officers, and scores of lawyers. They sifted through carloads of literature and speeches, selecting the most inflammatory passages for use in the trial. Andrews' speech was studded with these quotes and with highlights from the most damaging evidence given by Crown witnesses. Andrews began by interpreting the charges for the jury:

Gentlemen, if you search this indictment from beginning to end you will not find one word about our saying that they attempted to overthrow the government. We say [...] that their intention was to bring about discontent and dissatisfaction and what could be the logical result some day – revolution – some day overturning the government. Anyone can read the charges, they speak for themselves [...] I ask you, gentlemen, if you ever dreamed that there was such seditious literature circulating through this country as has been brought before you on this trial. I suggest to you, gentlemen, that the government never dreamed of what was being carried on in this country.

Then he appealed to the jury's sense of patriotism:

Our first allegiance is to the great God who made us. That is man's first duty. What is his second duty? A man's second duty is to his country, such as exemplified by the splendid heroism of our young men who sprang to the aid of their country, willing to sacrifice their lives for their country's honour. They left their homes, they left their wives and their little ones and went to France to fight for their country [...] Yet what

did Mr. Russell, so courageous, what did he say? His first duty was to himself [...] 'Self-preservation is the first law of nature.' It is the law of the animal.

Andrews had introduced into his address a subject that has no place in a seditious trial. A man need not prove his patriotism in order to defend himself from this charge. But in the minds of the jury, a lack of patriotism might be associated with seditiousness.

In an attempt to prove the existence of a conspiracy, Andrews launched a verbal assault against the eight accused men. His ill feelings toward Ivens was particularly evident:

Have you any doubt about Ivens' guilt? Have you any doubt about his connection with this conspiracy when you think of the speeches that he has made, when you read that he is editor of the *Labour News*? [...] I can't insult your intelligence [...] When a clergyman goes from the church [...] he often goes a long way before he stops.

Typically, Andrews did not express his dislike for anyone, except when speaking of Ivens. Perhaps, it was because Ivens had rebelled against the Methodist church. After all, Andrews' father had been a Methodist minister and Andrews was himself a Methodist.

On this day, Andrews' attack would extend beyond Ivens:

Armstrong, the 'soap box orator.' My learned friend Mr. Bird in opening compared him to the agitators of Hyde Park [...] No question about Heaps [...] voting every time, prostituting his oath [...] voting against every resolution which he ought to have supported in restoring the public utilities to the people of the City of Winnipeg [...] Queen making seditious speeches, Queen in the City Council, prostituting his oath of office just as the others [...] Bray, one of the members of the strike committee [...] the man who led all these processions [...] Goes up to the Premier, making demands upon the Premier.

Andrews explained that the law holds each conspirator responsible for the conduct of the others. On this principle, he argued that Russell was responsible not only for the speeches of his fellow defendants, but for the mass of propaganda in evidence.

Andrews moved to the more general topic of socialism, drawing a distinction between that which is merely idealistic and socialism in its more dangerous form. He told the jury how when he was a young man, some people thought he was a socialist: "Every young man, who, if there is any hope for him starts out as being more or less of a socialist. We have no quarrel with the accused if he thinks that the 'Soviet' form of government is the only form of government. We have no objection to him in a legitimate way discussing that." Andrews' compelling point was clarified with an analogy to a farmer setting his fields on fire: "Suppose it gets out of bounds and burns your neighbour's property?" Like the farmer, Andrews accused the men of lighting

a destructive torch. As a result, he asserted that they must be held responsible for the consequences. Although he claimed to not be opposed to socialism, he said, “we are attacking revolutionary socialism.”

With great emotion, his address continued with a description of “the education of the masses” as practised by Russell and the Socialist Party of Canada. Once again, he used a memorable analogy to give weight to his point:

Suppose the accused and his associates take a can of gunpowder, and they place it under a great building and they place some matches nearby, and they go out in front of the crowd, and they preach hatred against the owner of that building. They say, ‘There is gunpowder under the building; there are matches; we won’t tell you what to do; we are educating the masses; they will know what to do when the time comes; we educate the masses; we will sing the song of hate, just as the Germans sang the song of hate.’

Compounding his point further, Andrews turned his attention toward the socialist propaganda used by Russell and his associates to keep the flames of revolution burning. He read a quote from the preface of an edition of the *Communist Manifesto* published by the Socialist Party of Canada, which proclaimed the near approach of a new social order. The use of metaphor and quotations were used to demonstrate Russell’s power and influence.

After wading through much of the bitter Marxist hate propaganda against the capitalistic system, Andrews commented that Russell would like us to believe that his party was of the mild, armchair socialist type. “Gentlemen, you cannot help but believe that this is the rankest, revolutionary literature that could possibly be produced, and seditious from cover to cover,” Andrews told the jury. Andrews also explained that in contrast with much of the literature published by other socialist parties, not one piece of literature published by The Socialist Party of Canada contained a reference to bringing about change through the use of the ballot.

Nearing four o’clock, Andrews defended the conduct of the Citizens’ Committee and delivered his final remarks to the jury:

You are not trying any Citizens’ Committee, gentlemen. Are you surprised that there were men like myself who, when we saw the children without any fault of ours and without any fault of the children, deprived of the means of life – when we saw the people faced with the impossibility of getting bread, are you surprised that we should at that time, have been unwilling to submit to the dictation even temporarily, of the Strike Committee? Would you say that you would be willing to crawl on your hands and knees to the Labour Temple, to bow your head three times to the floor, to get the children and the city milk? [...] I leave the case to you, confident that you realise the importance of the issues at stake here, confident that you have the courage and independence to do your duty. If you feel convinced that the accused is innocent or there is a reasonable doubt, acquit him. On the other hand, if the evidence points to

his guilt and you feel satisfied that he is guilty of the charge as laid, have the courage of your convictions and let that be your verdict.

The jury was given a recess until eight o'clock that evening, when Justice Metcalfe would make his charge to the jury.

That evening, Justice Metcalfe, visibly weary, began by commenting on the ardour of the trial: "Gentlemen of the jury, after twenty-three days actual sitting, day and night, after the filing of 703 exhibits and the taking of voluminous evidence, I hope you will believe me when I say that I am almost physically unfit to complete my part of this trial." In a speech lasting four hours, he tried to give a compilation of the law. He spent fifteen minutes reviewing the indictment for the jury, and then proceeded to give a series of legal definitions explaining sedition, conspiracy, intent, overt actions, common design, riot, and other relevant terms.

Justice Metcalfe presented the law on sedition as interpreted throughout centuries by eminent jurists:

Sedition is a comprehensive term, embracing all those practices, whether by word, deed, or writing which are likely to disturb the tranquility of the state, and lead ignorant persons to endeavour to subvert the government and the laws of the empire. The objects generally are to excite discontent and insurrection, stir up opposition to the government, and to bring the administration of justice into contempt. This definition is somewhat vague, but in that respect it only resembles the offence itself. It is hard to lay down any decisive line, on one side of which acts are seditious, and on the other innocent [...] It is quite proper that you should consider the time [...] place and circumstances under which the seditious acts were to take place [...] A torch applied to a green field may not be likely to cause a conflagration. Just so, words spoken in privacy or during a quarrel, or in the heat of the moment or in normal times, may not be likely to have seditious effects, and may be overlooked, yet when spoken in times of stress and in more public places, may be likely to cause discontent, hostility, and disturbance as to be seditious.

In addition, Metcalfe laboriously traced the development of the laws governing the organisation of trade unions and their right to strike, from the first Statute of Labourers passed after the Great Plague in England through the 18th and 19th centuries to the current status of the law in Manitoba. It is unlikely that the jurors were able to appreciate the meticulous and legalistic treatise on trade union law, more suitable to a lecture for lawyers than a charge to a jury of farmers. The one point they undoubtedly grasped was his declaration that sympathetic strikes were illegal.

The judge voiced implicit censure of Russell's stand by praising the Canadian form of government:

When we consider the benefits daily conferred upon our people by the British Constitution, that crowning effort of centuries of bloodshed and sacrifice, it should fill the heart of all British subjects with gratitude that God has seen fit to place them

within the jurisdiction of that Constitution; and they should rightly guard and prevent its destruction by unlawful means [...] Gentlemen, after hearing the evidence of what socialism is, may we not remember the words of that illustrious countryman of Mr. Russell, and ask ourselves, 'Breathes there a man with soul so dead, who never to himself has said, this is my own, my native land' [...] What do you think of patriotism? What do you think of allegiance to your country? What do you think of allegiance to the brotherhood of the world, limiting the brotherhood of the world to the working class? Well, I like my country. Do you?

Following Andrews' lead, Justice Metcalfe voiced his own views on patriotism, providing a sharp contrast to Russell's previous statements on the importance of self-preservation.

It was after midnight when Justice Metcalfe gave his final instructions to the jury:

The constitution of this country is excellent. It has handed down to us great blessings, and the enjoyment of those blessings finally and ultimately depends upon the conduct of juries. It is with them, by their verdicts, to establish their fellow men, if innocent, in the enjoyment of their rights [...] If you find upon due consideration of the case that the accused meant no real mischief to the country you should find him not guilty [...] If you find the accused guilty and feel that he is entitled to leniency, you may recommend him to mercy. And if you feel that you are justified in making such recommendation, it will have the due consideration of the Court. Now, gentlemen, you may retire and consider your verdict.

When the judge finished his address, Cassidy rose to speak: "May Your Lordship please, there are some objections which I am about to take in regard to your charge." The jury was excused, and Cassidy proceeded to list a large number of objections, including one concerning the judge's comments regarding socialism:

A great deal of Your Lordship's charge was taken up by passing strictures upon socialism, and upon the accused and the other defendants who happened to be socialists, because of the doctrines of the Socialist Party, which in my view must have greatly prejudiced the jury. Whereas in point of fact the Socialist Party is not on trial here at all.

The jury was recalled and Metcalfe reinstructed the men on some of the points raised by Cassidy. However, Cassidy had to remind the judge of his objection concerning socialism. Upon doing so, Metcalfe provided further clarification on the matter:

With regard to socialism, Mr. Cassidy was afraid I had misled you there, and really gentlemen, I am not making any play upon words. I am not in very fit physical condition at the present moment and it may be that I did not make it quite as clear as I should have made it, and it may be that I misled you in regard to that. I didn't think I did, but I don't want to leave any wrong impression in your mind. Socialism is not on trial here at all, but such socialism as was expressed by Russell and those with whom he associated.

Upon completion, Metcalfe told the jury they could retire. The judge asked when the jury might be ready to deliver its verdict and the foreman for the jury gave an ominous response:

METCALFE: I do not think I will come here before eleven o'clock, unless you think you will be ready before that time. What time would you like me to come?

FOREMAN: We were nearly satisfied we might be ready by ten o'clock.

Typically, a quick verdict meant bad news for the defence. However, Russell and his defence team were hopeful this would prove to be an exception.

CHAPTER FIFTEEN

The next morning, the jury reconvened in the jury room adjoining the courtroom. Meanwhile, the atmosphere in the courtroom was informal. The judge was not present, and the defendant, counsel, and spectators casually walked about the courtroom and hallways. A knock was heard at the jury room door. The constable answered and received the announcement. The jury had reached its verdict. The judge was hurriedly called from his chambers and the lawyers were summoned. The chatter from the large crowd in the public gallery was stilled.

The jurors filed silently into the courtroom and took their seats. The reporter for the *Evening Tribune* described the scene:

Theatrical managers would give much if they could produce plays which would hold an audience as tense as did the concluding scene of the Russell trial drama which was unrolled to the largest crowd attending the courtroom during the whole trial [...] The dropping of a pin could have been heard as the clerk of the court rose to question the jury.

The clerk shattered the silence: "Gentlemen of the jury, have you agreed upon your verdict, and if so, who shall speak for you?" The crowd held its breath and strained forward as the foreman of the jury rose to reply. Although his voice was low and unsteady, it could be heard to the farthest recesses of the room. "We have," he responded.