

CHAPTER SIXTEEN

The Christmas recess — that period from just before Christmas to just after New Year’s Day — is a special time in Winnipeg. Traditionally, the legal profession takes a holiday, and the higher courts do not hear cases during this period. The legal cycle slows down, clients refrain from calling lawyers, lawyers refrain from hounding court reporters, and the registrar allows his clerks and staff a rest. Typically, the holiday spirit fills the air and lasts for almost two weeks. This was not the case in 1919. On New Year’s Day, the *Manitoba Free Press* carried an editorial titled “The Coming Year” that read:

This is an unhappy city, full of dissension, antipathies, with large numbers of people cultivating grudges, real and imaginary, and looking for revenge. It was certainly a perverse fate which made Winnipeg [...] the scene of the bitterest industrial conflict which this country has seen [...] There ought to be some mitigation of these evils during the coming year in the interest of the happiness and prosperity of the people of Winnipeg.

Lieutenant-Governor Sir James Aikins issued a New Year’s message seeking harmony. He called for a “truce” and a “halt” to the “orgy of wastefulness,” but his message sounded a disturbing and contradictory note: “Let us drive out from among us that foreign thought and propaganda [...] and punish all those who fatten on fostering trouble.”

The Christmas recess of 1919 found one small group of lawyers with little time to celebrate the holidays. Russell’s appeal was to be heard on January 8, 1920 by Chief Justice Perdue and Justices Haggart, Dennistoun, Cameron, and Fullert. Despite working over the Christmas recess, Russell’s defence counsel did not have enough time to prepare.

Today an appellant is free to raise as many objections as he chooses to argue before the Court of Appeal. In 1920, however, an appeal could be made only on a limited number of points of law stated by the trial judge. The defence and the Crown counsel met with Justice Metcalfe during the first week of January to formulate the questions for the reserved case to be heard before the Court of Appeal. Justice Metcalfe agreed to allow fifteen questions to be the basis of the appeal.

On January 8, Cassidy began by advising the court that he was not ready. He asked for more time to study some of the questions that would be argued. Chief Justice Perdue conferred with the other judges and announced that Cassidy could leave the court to study specific points while McMurray was arguing those which had already been prepared. Cassidy protested that there was still not enough time to prepare, and he refused to leave the courtroom

while argument was in progress. The court told Cassidy the hearing would proceed as scheduled.

By the morning of January 9, Cassidy had reached the fifth point in the appeal. He informed the court that he was unable to argue on this question without a transcript of the trial evidence. After close and prolonged questioning by Chief Justice Perdue, Cassidy revealed that he had not ordered the evidence. Chief Justice Perdue was unsympathetic. "You have made a very serious oversight in not ordering the evidence," said the Chief Justice. "And you admit you have not prepared yourself. If you are embarrassed by the lack of evidence you alone are responsible. Surely you have had time to prepare yourself since December 24th when the trial was ended."

On January 12, Cassidy again requested an adjournment, seeking time to review a transcript of the trial. "It will not be long before I will be unable to go further," he told the court. The Chief Justice lectured Cassidy for his improvidence:

You have made a great many oversights, Mr. Cassidy, but one of the most serious is your failure to order the evidence [...] You will have to go on and do the best you can [...] You have had considerable time since the case was finished in which to prepare [...] We must be finished by January 20 as there is a panel of 250 jurymen [called to continue the assize] and any postponement would be far too expensive to the country.

The judges of this court were aware that the questions raised by the appeal had to be resolved before the same issues were raised again at the trial of the remaining defendants. However, they remained firm in their decision to proceed without interruption.

Cassidy continued to plead for more time and persistence now sprang from desperation. The Chief Justice said that the judges would adjourn for a few minutes to discuss the problem. When the court reconvened, the Chief Justice announced the consensus of opinion: "Either Mr. Cassidy must proceed with his argument or the court would move on and ask the Crown to commence their argument." On the afternoon of January 13, Cassidy announced that the appellant had closed his argument.

Andrews immediately began his argument on the propriety of judge's rulings. He was well prepared, having in his possession relevant portions of the trial transcript. The court asked him to limit his argument to a number of specific points, as they had already reached a decision on the majority. Andrews' submissions were brief and forcefully made.

At the conclusion of the Crown's case, Cassidy reiterated his objection that much of the literature relied upon by the Crown should never have been submitted as evidence. Mr. Justice Perdue replied, "Mr. Cassidy, this literature simply reeks with sedition. There was an endeavour to displace our

government and establish a soviet that would be linked with the Bolsheviks of Russia. No doubt the jury was right in saying that Russell was guilty, whether he escapes on a technicality or not.”

After only six days of argument, the appeal hearing was concluded on January 15. The same day the daily papers reported that, “The Winnipeg Local No. 3 of the Socialist Party of Canada has decided to run candidates in the forthcoming provincial elections. R.B. Russell will be one of the candidates.”

Chief Justice Perdue advised that the court would announce its decision on Monday morning, January 19, 1920, which was a day before the assizes were scheduled to continue. The written reason would come later.

When the court convened on January 19, Chief Justice Perdue announced each decision on the fifteen points of appeal. The court unanimously upheld the rulings of the trial judge on each of the points. The appeal was dismissed.

The written judgements that followed were lengthy and detailed. The language of the judgements was vehement in condemnation of the defendants: “Their ultimate purpose [...] was revolution, the overthrow of the existing form of government in Canada and the introduction of a form of socialistic or soviet rule in its place. This was to be accomplished by general strikes, force and terror, and, if necessary, by bloodshed.”

Chief Justice Perdue referred to the terror to which citizens had been subjected, the danger to food and water supplies, the riots and the injury to people and property:

Such acts throw much light on the purpose and intention of the conspiracy. Much of it was seditious, some of it was treasonable [...] The general strike of last summer was, in fact, an insurrectionary attempt to subvert the authority of our governments, municipal, provincial and dominion, and substitute for them an irresponsible ‘Strike Committee,’ an attempt attended for a time with a measure of success which, looked at in retrospect, seems incredible. This ‘Strike Committee’ issued decrees in the approved soviet style.

Justice Cameron expressed a similar view:

It was a bold attempt to force the public into submission through financial loss, starvation, want, and by every means that an autocratic junta deems advisable [...] I cannot see how it is possible to speak of such revolutionary uprising as a mere ‘sympathetic’ or ‘general’ strike. In view of the grim facts, to argue that this outbreak was brought about for the purpose of a trade combination is, to my mind, simply out of the question.

Because there were no dissenting opinions, the case could not be taken to the Supreme Court of Canada. The only appeal possible was a Petition for Leave to Appeal to the Judicial Committee of the Privy Council in London,

England. It was necessary to seek leave of the Privy Council to hear the appeal. The petition was filed and W.H. Trueman, the lawyer who wrote the opinion stating that sympathetic strikes were not illegal, went to argue for the defendants. The Canadian government hired the renowned English lawyer Sir John Simon to argue for Canada.

The Judicial Committee of the Privy Council refused to grant Leave to Appeal, finding no sufficient reason to interfere with the Criminal Courts of Canada. There had been a jury trial and the Manitoba Court of Appeal had unanimously dismissed an appeal from the conviction. At the hearing in London, Lord Birkenhead is reported to have said that some of Russell's remarks sounded "somewhat seditious to him." Because Canada was a self-governing Dominion, the Privy Council was reluctant to interfere in Canadian criminal matters. As a result, Russell's fate had been decided.

Cassidy's experience had been bitterly disappointing, but many felt he brought this misfortune upon himself. Disillusioned and exhausted, he withdrew as counsel for the defence. He would not participate in the imminent trial of the seven other defendants.

CHAPTER SEVENTEEN

On January 20, one day after the Manitoba Court of Appeal unanimously dismissed Russell's appeal, Frederick John Dixon's trial began. He faced charges of seditious libel for his writings during the strike. The Crown had decided to proceed with Dixon's trial before Woodsworth's trial for the same reason they had proceeded first against Russell. With their confidence buoyed by Russell's conviction, the Crown had announced that the remaining seven strike leaders would be tried together, rather than individually. That trial was beginning concurrently in courtroom No. 1.

Dixon was a big, fine-looking Englishman, an insurance salesman and elected member of the Manitoba legislature. One of Dixon's assets was his ringing baritone voice, which could reach the farthest corners of the largest theatre and keep an audience spellbound. He was a well-educated speaker, although he had only completed elementary grades in England before he left school to work.

Dixon had been born during one of the worst storms that ever hit England, and somehow this event characterised a good part of his life story.