

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.

Few men were tested as he was during his short life. Despite enduring ample tragedy, he is remembered as a man who faced his troubles with strength, composure, and dignity.

The Confederation Life Company had suspended Fred Dixon until the outcome of his case was determined. With a wife, Winona, two children, and a mother-in-law to support, Dixon faced a difficult situation financially. Neither Winona nor his sister Lynn (who lived with his family) could find employment in Winnipeg. When they learned secretarial work was available in California, Winona, Lynn, and Dixon's mother-in-law decided to take the children and go there in search of work. Winona regretted that she would not be with her husband during the trial, but realised that Dixon would be able to concentrate on his defence. Dixon took some small loans from his nephew to tide him through the trial.

Dixon was determined to defend himself against the charges, and he soon set about learning the skills needed to prepare and deliver his legal defence. During the Christmas holiday, he travelled to the small town of Birtle, Manitoba, where his friend Louis Stubbs practised law. At the lawyer's home, he began an intensive course in conducting a criminal trial.

Dixon joined the Stubbs family in the holiday celebration. One evening, the family gathered around an Ouija board that one of the children had received for Christmas. When it was Dixon's turn, he asked, "Will I be acquitted in January?" The planchette pointed to "Yes." Dixon asked if Stubbs had moved it. "No," insisted Stubbs, and he assured his friend that the jury would acquit.

E.J. McMurray, a long-time friend, also lent assistance in preparation for the trial. Dixon had worked painstakingly on his address to the jury, using Joseph Howe's address in defence of liberty of the press as inspiration. After listening to Dixon practice, McMurray advised, "you must remember you are talking to twelve men in the jury box, not addressing a public meeting. Talk slower, stand close to the jury box, and let those twelve fellows have it straight from the shoulder, just as you would if you were talking to twelve men in your home." After three sessions, McMurray finally approved of the delivery and said Dixon was ready to meet the jury.

The forces arrayed against Dixon were daunting. At one end of the table, in their impressive black robes, sat the prosecuting counsel, Hugh Phillips, K.C., Joseph T. Thorson, future President of the Exchequer Court of Canada, and Archibald Campbell, who later became a judge of the Manitoba Court of Queen's Bench.

Justice Alexander Casemer Galt was assigned to hear the case. His father was Sir Thomas Galt, the knighted Chief Justice of Ontario. His grandfather, Sir Alexander Tilloch Galt, remains immortalised as one of the thirty-four

Fathers of Confederation. He can be seen seated at a great table in the famous painting by Robert Harris, which was commissioned by the Government of Canada to record the historic conference of 1864 that led to the founding of Canada in 1867. A Canadian city bore his family name. Unfortunately, the aristocratic justice was not highly regarded by other members of his profession. He lacked a rapport with ordinary men and had little sympathy for those charged with crimes. His obvious prejudices against an accused had been known to cause juries to react by returning a verdict of acquittal.

The chief Crown prosecutor, Hugh Phillips, K.C., was dressed primly with a wing collar. He was courteous, in a stiff and formal manner, and had a mixed reputation for his courtroom ability. His best side was his thoroughness and dedication to his work, and he often toiled long evenings in the law library in his home. But he had a slow mind and a total inability to be extemporaneous. He invariably read from his notes in court and was too inflexible to change his plan of attack or adjust his position as the case progressed. E.J. McMurray described him up as a “stupid man.” His was the kind of personality that Dixon could handle well.

It was Fred Dixon’s thirty-ninth birthday, but there was little to celebrate as indicated by Phillips’ opening words. The Crown intended to show that articles written by Dixon in support of the strikers tended to incite passion, preach disorder, set class against class, and inculcate the doctrines of hatred:

The offence with which the accused is charged is one of considerable gravity. Seditious libel must be judged by both the actual wording of the speech or written article and the intention of the speaker or writer’s mind. It is impossible to dig into a man’s brain and reveal the state of his mind, but it is possible to show by previous actions and by previous associations what state of mind he likely had [...] The Crown will attempt to show that the accused fully sympathised with the aims and objects of the strike leaders, that he spoke with them on the same platform and endorsed their sentiments in articles which he wrote for the *Western Labor News* and the *Strike Bulletin*.

Furthermore, Phillips told how the strike resulted in “riots, loss of life, and much bloodshed.” He described the parades on the legislature, “the defiance of the mayor’s proclamation forbidding the holding of the silent parade,” and the deaths that occurred on Bloody Saturday. He described Dixon’s articles as being seditious:

[Dixon’s articles] were written with seditious intent for the purpose of inciting the strikers [...] the blood of that man who was killed on Saturday is on the head of the man who wrote this article [...] A writer may freely criticise any officer of the state or the laws of the state in a fair manner and without malice. But as soon as his writings become malignant, as soon as they promote disorder, insurrection, or incite persons

to forcibly obstruct the execution of the laws of the state or bring those in authority into disrepute, then his writings become seditious and punishable.

While Phillips delivered his opening address, Dixon sat at the end of the table closest to the jury. The prisoners' box was empty, an unusual sight during a criminal trial. Sometimes Dixon sat alone, but often Woodsworth sat beside him. Also seated in the courtroom was Hugh Cutler, a Winnipeg lawyer, who helped Dixon to argue technical points of law. Louis Stubbs, Dixon's friend and teacher, listened quietly in the audience. Unobtrusively, these three men consulted with Dixon frequently and were a constant source of support.

After a day of preliminary wrangling, the Crown's first witness, Sergeant F.E. Langdale, from the Military Intelligence Department of the Army was called. Dixon objected to one of the first questions concerning the Walker Theatre meeting on December 22, 1918 on the ground that the time was too remote to have any bearing on articles written in June 1919. However, the objection was overruled. Langdale described the Walker Theatre meeting and read excerpts from Dixon's speeches. He also reported on the resolution, seconded by Dixon, for the release of all political prisoners.

On Friday afternoon, Dixon began cross-examination of Sergeant Langdale. At issue was the accuracy of Langdale's account of the Walker Theatre meeting, and under Dixon's relentless questioning it became evident that Langdale's account was at best patchy and his reports muddled:

DIXON: Did you hear me say this?

LANGDALE: Well, I have the first part of that.

DIXON: Did you have the second part. It goes on.

LANGDALE: I am telling you, Mr. Dixon, I was not able to follow
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DIXON: Did you get this down?

LANGDALE: No.

DIXON: Nor this [...]?

LANGDALE: No, I have not got it.

Because he had retained copies of his speeches, Dixon was able to challenge the erroneous extracts presented by Langdale and other Crown witnesses, and he was able to put into evidence the full text of his Walker Theatre speech.

The comparison of Langdale's testimony to the actual words spoken by Dixon substantially discredited Langdale's evidence.

Sergeant W.H. McLaughlin of the RNWMP, who posed as a striker during the strike, was examined on the same afternoon. He gave evidence of having attended various meetings at which Dixon was a speaker. He had bought socialist literature at these meetings and copies were filed with the court.

McLaughlin was vigorously cross-examined. Dixon exhibited enormous skill in his own defence. Again, he was able to correct the evidence that was being put before the court.

Later that day, Dixon wrote to his nephew about the material that was being let in as evidence: "Judge Galt is behaving like a gentleman. Phillips and I have many brushes, and while I think His Lordship has let in much irrelevant matter, he is very nice about it."

On January 31, Dixon released Hugh Cutler from his duties as legal advisor. Cutler had argued some points of law with Phillips, but was having little success. That day, Dixon summarised his experiences in another letter:

I have dispensed with Mr. Cutler, who was to have assisted me in arguing points of law, because Phillips with all his pretence at fairness was stabbing at me through Cutler. For example, he accused him of trying to address the jury under cover of arguing a point of law. So I stated that I did not intend to subject Mr. Cutler or anyone else to such insults and asked him to retire [...] I am having a pretty good time cross-examining witnesses and am getting a lot of stuff that is helpful to me out of the witnesses Phillips is calling, also I am exposing the sham of his pretension to fairness [...] Yesterday he wanted to stand a witness aside to be recalled at a later date. I protested against this but he insisted that he wanted to preserve the chronological sequence. I told the court it was a pity Mr. Phillips didn't think of chronology when he forced in evidence of subsequent meetings. He then said that he only varied his rule because the witness was a country lawyer and he did not wish to keep him from his practice. I pointed out to the court that the witness I was referring to was not a country lawyer but a RNWMP whom Mr. Phillips could get at any time. Then Mr. Phillips – the fair – flew off the handle and said, 'The Crown is running this case. The Crown has made its plans and it will not be upset by anyone.' His Lordship ruled in favour of the Crown and I subsided saying, 'Very well. I suppose the Crown must prevail.' All the same, I think the jury got an idea how fair Mr. Phillips really is. Things are looking pretty good and by this time next week I shall be nearly through. Phillips has announced that he will call forty-two witnesses and we have dealt with four.

The next day, disenchanted Strike Committee member William Percy took the stand. He reported on the Strike Committee's activities and told how the life of the city came to a standstill during the strike. As he had in Russell's trial, he described of his growing suspicions of the strike leaders and his subsequent decision to oppose them.

Percy told how Dixon worked for Woodsworth as a volunteer reporter for the *Strike Bulletin*. After Woodsworth had been arrested, he had continued publishing a strikers' daily paper, first the *Western Star* and then the *Enlightener*. Percy identified the various issues of the strike newspapers and copies were placed in evidence.

On the morning of February 3, Phillips asked that evening sessions be held. In a letter the next evening, Dixon commented on this request:

Galt gave him a nice rub yesterday, too. Phillips wanted the jury to sit at night. The judge left it to the jury; the jury left it to the judge. The judge said he could not see any necessity for it. Phillips pleaded that he had a lot of documents to read. Galt said, 'Perhaps if you take the time at night to look them over you will not need to put in so many.' And I said, 'Hear. Hear.' I think his lordly nibs – Phillips – is getting in Dutch with the jury. All I have to do is keep him going.

This ruling was fair and fortunate for Dixon. Evening sessions would have tired out the jury and brought intense pressure on the defendant in conducting his own defence.

On February 4, the Crown introduced masses of documents and letters that had been seized in raids across Canada. A number of letters that had passed between Russell and the secretary of the Dominion Executive of the Socialist Party of Canada were introduced, and much of the day was taken up by Inspector E. Green telling how some of the documents had been seized in Russell's room in the Labour Temple and in Russell's home on June 17. Dixon let the evidence go in unchallenged. During the next two days, over Dixon's objections, the Crown successfully introduced many more documents with little or no obvious connection to Dixon. The documentary evidence was piling up.

On the morning of February 6, Mayor Gray was called to the stand. He testified in great detail and length about the strike, the disruption to the city, and the riots. The evidence was entered without Dixon's objections.

Late that afternoon, Dixon began his cross-examination. "What has all the evidence you have been giving to do with seditious libel?" asked Dixon. In addition, he challenged the mayor's account of the June 21 riot:

DIXON: You said you heard some shots fired before you read this [The Riot Act]?

Gray: Yes.

Dixon: Were the special police on the streets then?

Gray: Yes.

- Dixon: Were they armed with guns?
- Gray: Some of them were, I believe, I am not sure of that; I believe some of them were.
- Dixon: Did you see who fired these shots that you heard?
- Gray: No.

Although Gray's testimony for the Crown suggested otherwise, Dixon showed that gunshots had been fired before the Mounted Police were instructed to shoot into the crowd and that these early blasts were likely fired by the Specials.

Dixon's cross-examination of Mayor Gray continued until late afternoon when court was adjourned. Gray's testimony continued the next morning and Dixon tried to demonstrate that Andrews and the Citizens' Committee had encouraged many of Mayor Gray's actions. This was a difficult task. Judge Galt would not allow an inquiry into the subject and whenever a fact emerged that might prove embarrassing to Andrews or the Citizens' Committee, Phillips was on his feet objecting. Dixon persevered. He asked Mayor Gray whether he remembered Alfred Andrews' suggestion that affiliation of unions should be made a criminal offence. The court intervened. "Don't take things of that kind," erupted the judge. "Mr. Andrews is not only a man of common sense, but he is a lawyer and he knows better."

The next Crown witness was Corporal Zaneth, the young RNWMP corporal who had worked as an undercover agent. Zaneth told how he had infiltrated the ranks of the Socialist Party of Canada under the name Harry Blask, a supposed member of the International Workers of the World. He had, among other things, been responsible for selling literature for the socialist party.

Zaneth identified pamphlets he sold at labour meetings. One of the pamphlets, called *The Farm Slave*, sparked some interest when Phillips read portions to the jury. Justice Galt asked Zaneth what was meant by the term "farm slave." The witness replied that all those who worked for wages were considered to be slaves by the Socialist Party of Canada.

Dixon objected to the reading of the literature because it had not been distributed at meetings in which he had been present. Justice Galt replied that it was admissible as the Crown was endeavouring to show that Dixon was party to a general conspiracy. Dixon, however, reminded the judge of the charges against him:

DIXON: But My Lord. I am not charged with conspiracy, but seditious libel, and I wish to make objection.

GALT: Quite so, Mr. Dixon. You are quite right.

On cross-examination, Dixon questioned Zaneth about *The Farm Slave*. Zaneth admitted that he had never thoroughly read the pamphlet. Under further questioning, Zaneth revealed a lack of knowledge of the various forms of government. Furthermore, Dixon raised some doubts about Zaneth's nationality:

DIXON: You say you are Italian?

ZANETH: Yes.

DIXON: Were there any Italians in the mines in Drumheller?

ZANETH: A few.

DIXON: Are there any mines in Italy?

ZANETH: There are none in the North where I come from.

DIXON: Are there any in the South?

ZANETH: I don't know.

DIXON: Did you meet Michael Angelo at Drumheller?

ZANETH: No.

DIXON: Did you ever hear about him?

ZANETH: No.

DIXON: Did you meet Marcus Aurelius at Drumheller?

ZANETH: No.

DIXON: Did you ever hear about him?

ZANETH: No.

DIXON: Did you meet Mazzini at Drumheller?

ZANETH: No.

DIXON: Did you ever hear about him?

ZANETH: No.

While Dixon questioned Zaneth, the judge, jury, and audience convulsed with laughter.

DIXON: Did you meet Garibaldi at Drumheller?

ZANETH: No.

DIXON: Did you ever meet me before?

ZANETH: No, I've never seen you before I saw you in the courthouse.

DIXON: That's all.

At this time, Phillips made an attempt to rescue his witness:

PHILLIPS: My Lord, I might suggest that it is a long time since we went to school. I myself have forgotten the names mentioned by Mr. Dixon.

DIXON: My Lord, Mr. Phillips did not go to school in Italy.

Although the situation was ridiculous, Dixon had succeeded in discrediting the Crown witness.

On February 9, Basil Baker, an insurance manager, took the stand. He testified that one week prior to the strike, seventy to eighty million dollars of riot insurance had been issued in Winnipeg. On cross-examination, Baker admitted that while his own company had issued thirty million dollars of riot insurance, it had paid out only one hundred dollars in damages.

Several more witnesses were called to describe how the strike had disrupted their lives. One witness, J.C. McNab, identified stones that he claimed had been thrown at him during the strike. McNab had been a witness in the other trials, and these stones were carried from courtroom to courtroom along with many other important exhibits.

Sergeant Major Binning of the RNWMP was called as a witness for the Crown. He had led the mounted troops on "Bloody Saturday." Mr. Phillips

read the passage from Dixon's article that stated "fifty Mounties had swept down Main Street with baseball bats swinging." Binning said that the statement was false. During cross-examination, Dixon suggested to Sergeant Major Binning that the baseball bats might have been swinging from the saddles. Binning replied that they might have been. Dixon questioned Binning further about the events of Bloody Saturday:

- DIXON: Could you say or did you see whether the men would fire into the air or whether they did not?
- BINNING: Yes.
- DIXON: Would you swear they fired into the air?
- BINNING: I am already sworn.
- DIXON: Then what do you say; did the people start to run?
- BINNING: Yes, some of them did.
- DIXON: And then you fired again?
- BINNING: Don't forget they were beating us with stones at that time.
- DIXON: But they started to run any way?
- BINNING: Yes.
- DIXON: And you fired again, and this time you fired low – the instructions were to fire low?
- BINNING: Yes.
- DIXON: And did they run again then?
- BINNING: Yes; pretty well cleared them up.
- DIXON: You went along in front of the City Hall?
- BINNING: Yes.
- DIXON: And were there any more shots fired? After that?

BINNING: There were shots fired in front of the City Hall.

DIXON: While they were still running?

BINNING: Yes.

DIXON: And they were running pretty fast then, were they not?

BINNING: Yes.

On February 10, the Crown called Ben Batsford, the *Free Press* cartoonist. Batsford described the parades he had witnessed and the meetings he had attended during the strike. Referring to the Majestic Theatre meeting, he said he had never been at a meeting “so envenomed against the government.” He quoted some of the statements made by the speakers at the meeting that, in his opinion, were highly revolutionary in character. However, he admitted that Dixon was not present at this meeting.

During cross-examination, Batsford expressed his disappointment in Dixon: “Once I thought you were a liberal, then I saw you change into a moderate supporter of labour but now, not without regret, I have been forced to the conclusion that you have left the ranks of the moderates for those of the extremists.”

The trial was nearing its end. Phillips advised the court that although notice had been given to Dixon that the Crown had intended to call sixty-five witnesses, the Crown had only called thirty-eight, “in order to avoid a needless repetition of evidence.” On February 12, Phillips announced that the Crown had closed its case.

It was now Dixon’s turn to present his case. He had not revealed his defence strategy, and the Crown did not know whether he would be calling witnesses. That afternoon, Dixon advised the court that he would close his case without calling any evidence. This meant that Phillips would make his address to the jury immediately and Dixon would have the benefit of the last speech.

When court resumed the next day, Phillips began his three-hour address to the jury. He told how Dixon had been on the platform at various meetings and had listened to seditious addresses without making any attempt to prevent them. Yet, as a member of the Manitoba Legislature, he was bound by oath of allegiance to uphold His Majesty’s laws. “Mr. Dixon’s duty was quite plain,” said Phillips. “He should have immediately notified the authorities that a conspiracy was brewing – but he did not [...] It does not matter if the accused was at all the meetings or not. The fact that he was connected in any

way with any of the meetings is proof that he agreed with the addresses given there.”

Phillips focused on the article “Bloody Saturday,” quoting such extracts as “peaceful citizens shot without warning [...] red coats re-formed and rode back with instruction to shoot to kill [...] some citizens applaud man-killers.” Phillips expressed his outrage: “Gentlemen, do you remember how Dixon had asked Sergeant Major Binning on the stand if they had used soft-nosed bullets? Gentlemen, that was an insult to the uniform of the mounted police. Does that indicate anything to you? Does that give you any insight into the spirit of the writer of that article?”

Phillips told the jury that although every Canadian enjoyed free speech, Dixon had gone too far. His writings were inflammatory and constituted seditious libel. He concluded by asking for a verdict of guilty as charged.

CHAPTER EIGHTEEN

On February 13, Dixon rose from his leather-covered chair and walked to the jury box to deliver his closing address. His first task was to ensure the jury remained mindful of the charge against him:

You are seized, gentlemen of the jury, with a great responsibility. You are the last hope of the subject in the matter of his personal liberty, and when all other things have failed he must place his hope in the judgement and conscience of the jury [...] I have undertaken a great responsibility in assuming to defend myself. I believe it is a proverb in the legal profession, that a man who defends himself has a fool for a client, however I have taken that responsibility and taken the risk [...] While I know there is some personal risk in the matter, there is a more important thing, and that is the public interest, and I am hopeful the public interest will not be injured through my body [...] I am, of course, strengthened in the feeling of innocence upon this occasion by the knowledge of the fact that under British law every man is considered innocent until he has been proven guilty [...] While I am charged with seditious libel, I have also been accused of every crime in the calendar; hypocrisy, blasphemy, distributing seditious literature, attending unlawful assemblies, riotous assemblies, rebellious conspiracies and every other thing that is in the *Criminal Code*. I am supposed to meet these charges. I shall meet them as best I may, but I want you to keep in mind that I am not charged with these things [...] I am charged with publishing seditious libel. These three particular articles published upon a certain date – it is with them you are to find me either guilty or not guilty.