

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'

Committee. While doing so, he criticised the Crown for possessing ulterior motives:

I say that the government policy in regard to the strikers, which includes the arrest of the eight defendants, was directed by the money interests of Winnipeg, who formed themselves into the Citizens' Committee. All the bankers, all the loan company managers, all the money class of Winnipeg formed that Citizens' Committee and then gathered around them citizens of various classes, whom they might influence, and through this organisation they in turn influenced the government.

Having denounced the Citizens' Committee, Bird directed his attention toward the committee's victims:

These eight men were put in the Stony Mountain Penitentiary – to await a trial? – No, there was to be no trial, they were even told they would be deported without trial in seventy-six hours. Think of it, seven British-born and one Canadian citizen to be deported. When they were taken into the court, the Crown opposed bail then we found the most insidious propaganda in the daily papers where the facts were not stated and letters deliberately garbled to be misread by the public for the purpose of raising a storm of indignation [...] Let me tell you here that all the counsel for the Crown stood in the same relation to the Citizens' Committee as the accused stood in relations to the labour movement.

Although truthful and compelling, Bird's rhetoric was a poor substitute for real evidence.

Certainly, a better approach would have concentrated on proving that Russell had no seditious intent, that he did nothing illegal, that he was not part of a conspiracy, that he did not cause the riots, and that he had made earnest attempts to settle the strike. However, these clear lines of defence were not established in the minds of the judge or jury.

Once the opening statements were made, the defence called Russell as the first witness. A defendant is not required to testify on his own behalf. If the decision is made to put him on the stand, he should be prepared to face a gruelling cross-examination. While it is improper for defence counsel to coach a defendant on his answers to the prosecution's questions, it is proper to explain to him, ahead of time, the purpose and significance of the questions, the admissions the Crown is seeking, and the lines of defence open to him. The limited extent of Russell's preparation by his lawyer would soon become apparent.

Russell told the court that he was thirty-one years old and had come to Canada from Glasgow nine years earlier. In Britain, he had been a member of the Independent Labour Party, which had a representation of forty-eight men in the House of Commons. As he tendered his membership card as an exhibit, Andrews objected. Cassidy insisted on the exhibit's relevancy: "It was necessary that the history of this man should be shown to the court to see whether his purpose was a sinister one [...] if all this is left out, we cannot try

the case.” After heated exchanges, Justice Metcalfe sustained Andrews’ objection, and Russell was prevented from providing the background of his work in Winnipeg.

Next, Russell attempted to explain how the wage increases had not kept pace with the costs of living. Bird attempted to enter schedules printed in the *Machinists’ Bulletin* as proof. Once more, Andrews objected and was upheld by the judge.

The defence then attempted to explore the motives behind the formation of the OBU and asked Russell to provide an account of his participation:

One of the principle matters of discussions at the Western Conference was the OBU. I [Russell] was nominated as an officer, but declined to take it. The principle underlying it was assembling of all unions into one organisation, which was known as industrial unionism. The need of this was great. In 1916, I was with the CPR and was in negotiation with the company. During this time individual unions made demands and the CPR said they would only deal collectively, not individually.

This account was cut short when, once again, Andrews objected to Russell’s testimony, stating that it would take too much time to explore in detail. However, Bird contended that this evidence provided justification for Russell’s efforts to form the OBU. Cassidy rose to argue the point on behalf of the defence:

METCALFE:                   The question is not what they intended then, but did they conspire to break the law? That is what he is charged with.

CASSIDY:                    I contend that on this point turns the case of the Crown. That is why he is objecting.

METCALFE:                   No, I don’t think it does.

ANDREWS:                  I resent the statement of my learned friend very much.

METCALFE:                  I will not admit the evidence of this CPR matter.

As usual, Justice Metcalfe ruled in favour of the Crown, and Russell was not permitted to provide further information to the court regarding the OBU’s philosophy and mandate.

Justice Metcalfe certainly appeared to be contradicting himself. The prosecutors had been allowed to introduce a wide range of evidence to show seditious intent, yet the court was not allowing the defence equal opportunity to demonstrate intent rooted in innocence rather than sedition.

Bird continued to question his witness and asked Russell to explain the difference between the philosophies of the Socialist Party of Canada and the more radical International Workers of the World:

RUSSELL: We negated the idea of the IWW which advocated sabotage. The Socialist Party of Canada advocates political action [and] points to the conditions in Russia for educational purposes.

BIRD: I have before me Exhibit No. 5, a letter written by you November 29, 1918, to Joe Knight. 'Well Joe, I expect we will now be confronted with the horrors of peace' – what are the 'horrors of peace'?

RUSSELL: Unemployment.

BIRD: The unemployment problem?

RUSSELL: Yes.

BIRD: The distress occasioned by unemployment?

RUSSELL: Yes.

Furthermore, Bird drew attention to the closing signature in the letter which read, "Yours in Revolt" and asked Russell to clarify the meaning of this closing:

BIRD: What were you in revolt about?

RUSSELL: Revolt about the conditions.

BIRD: What particular conditions do you refer to?

RUSSELL: The conditions of the system under which we find ourselves existing.

Bird worked hard to draw appropriate answers from Russell, often asking a series of questions to make a single point.

Russell's performance on the stand was unimpressive. When questioned, his answers were often vague and terse. This would be his only opportunity to sell himself to the jury, yet it was as though he did not realise that he alone

would have to tell his story. Rather, he failed to elaborate or clarify his statements in a convincing manner.

Russell remained on the stand all day. Andrews kept rising to enter objections to the relevancy of Russell's explanations:

CASSIDY: It is the first time I have seen in a court of law a criminal case where the accused was being examined on his own behalf being constantly stopped by counsel for the Crown in the attempt to embarrass the accused before the jury.

ANDREWS: It is so usual, My Lord, that I don't need to pay any attention to his last remark.

Apparently, Andrews shared the judge's antagonistic relationship with senior defence counsel. As a result, Cassidy spent a great deal of time engaged in futile debates.

When Russell tried to describe his attempts to settle the strike, Andrews objected, and the court ruled the evidence to be inadmissible. Of course, a lengthy dispute ensued. Without any legal authority, the judge propounded that as long as Russell remained firm in his belief in the principles for which the strike was called, he could not be making any real effort to settle the strike. But the defence vigorously challenged the judge's peculiar ruling:

METCALFE: I will tell you what I will do to stop this thing and get somewhere. If Mr. Russell ever abandoned what he says the sympathetic strike was called for, I will permit you to examine on that.

BIRD: Do I understand Your Lordship to say if Mr. Russell ever abandoned the sympathetic strike?

METCALFE: If it could only be settled by one side giving way entirely [...] that is no settlement, and if Mr. Russell never abandoned that question of collective bargaining, it is idle to say that there was any settlement. There might be an attempt to gain the victory, but I can't see any attempt to settle.

With good reason, Cassidy was outraged:

CASSIDY: No matter what the other merits of the thing may be, My Lord, the fact that a man wants to make a

settlement of a strike is at least a contradiction of the assertion that he wants the strike to go on in order to make a sinister use of that strike —

METCALFE: The settlement of the strike ending in victory?

CASSIDY: Ending anyhow at all, ending in a compromise.

METCALFE: Then I don't intend to allow general discussion of settlement.

The defence was not able to build any momentum, particularly with Andrews' constant interruptions.

Despite the judge's stated objections, Bird tried again to lead evidence to show that the Strike Committee was prepared to have the strike issue placed in the hands of Major Lyle for settlement on the best terms available. Justice Metcalfe promptly halted Bird's new effort:

METCALFE: We see it has gone so far — if there had been anything before that, it would not be such death-bed repentance. I don't think I will allow it.

BIRD: Even a death-bed repentance may have merits, My Lord.

METCALFE: Only the merits of a little bit of forgiveness.

BIRD: I am not suggesting that what I am offering is a death-bed repentance, I am just taking Your Lordship's phraseology.

METCALFE: I don't think it is of sufficient importance to put into the case when it gets here. There were many men, no doubt, on both sides, including Mr. Russell, shortly after the strike was called that wished it never had been called.

Justice Metcalfe held firm and, despite its obvious relevance to the question of intent, the defence was denied from exploring the matter any further.

With this important line of questioning quashed, the defence redirected its energies toward discrediting the Crown. Bird questioned Russell about his arrest and the testimony proved to be embarrassing to Andrews:

- RUSSELL: Counsel for the Crown, Mr. Andrews [...] told us we couldn't have bail so long as the strike was on [...] There was a man who they had no warrant for at all.
- ANDREWS: It is not a fact and the witness could not state it as a fact. There was a warrant.
- RUSSELL: It wasn't produced at that time.
- METCALFE: I am going to ask the jury to forget that.
- BIRD: Was it asked for, Mr. Russell?
- RUSSELL: Yes.
- ANDREWS: I object to the question. It has no connection with this trial at all.
- METCALFE: I have asked the jury to forget this, Mr. Bird [...] if Russell is guilty of a crime it matters not how, when or where he was arrested, or in what manner. It does not matter at all.
- BIRD: My Lord, I desire to conform to Your Lordship's ruling, but I do think it is important as showing, as it does, a light upon the inception of these proceedings, which according to my information is taken under the panic of the moment.
- METCALFE: It doesn't mean anything [...] I tell you now I am going to tell the jury this manner of the arrest and the place of confinement have nothing whatever to do with the fact as to whether Russell is guilty or not guilty [...] I'm going to impress them with that fact.
- BIRD: Counsel for the defence are entitled to deal with all the facts.
- METCALFE: Yes, but I have the last charge to the jury.
- BIRD: Mr. Russell, what further took place between yourself and Mr. Andrews?
- RUSSELL: We were notified that we would be taken before a Board of Immigration, which was on its way from

Ottawa and if found guilty without a trial we would be deported [...] I was given to understand we could be deported within seventy-six hours.

ANDREWS: My Lord, I object to the question. Your Lordship sees that as counsel for the Crown [...] I can't go into the box and state the facts. Counsel knows that – knows the position I am in.

Andrews protested loudly to the allegations made against him. Justice Metcalfe continued to provide the Crown with the protection it required to escape the onslaught unharmed.

It was inevitable that Andrews' actions would eventually enter into the evidence. In response to the evidence, his appeal to the judge was unreasonable. He had only himself to blame for the position in which he found himself. How could he possibly act as an unbiased Crown counsel when he was constantly concerned about excluding evidence involving his own conduct in the matter? Unfortunately for the defence, Justice Metcalfe disregarded the impropriety.

The next morning, Russell's testimony continued. The defence attempted to show the jury that Russell had no role in the June 10 riot:

BIRD: In the indictment you are charged with inciting riots at the Majestic Theatre.

RUSSELL: There was no incitement to riot at the Majestic meeting.

BIRD: In consequence of the Walker and Majestic meetings riots did occur, the indictment says.

RUSSELL: Riots did occur, but those who went to those meetings did not riot.

BIRD: Who rioted?

RUSSELL: The soldiers rioted.

BIRD: Did the Socialist Party of Canada take part in the riot?

RUSSELL: No.

BIRD: Whose property was destroyed?



- RUSSELL: The Socialist Party of Canada.
- BIRD: And you didn't start anything to destroy your own property?
- RUSSELL: I was not there.
- BIRD: About encouraging parades of the strikers; what do you say as to that?
- RUSSELL: The strikers had no parades.
- BIRD: Whose were all these parades?
- RUSSELL: They were parades held by the returned soldiers, which the strikers had nothing to do with.
- BIRD: What position did the strikers take with relation to parades?
- RUSSELL: I appeared before the soldiers who were holding a mass meeting in Victoria Park and appealed to them not to parade.
- BIRD: Now it is alleged that the General Strike Committee usurped the powers of government; what do you say as to that?
- RUSSELL: It is not true. We conferred at all times with the city authorities and representatives of the Dominion authorities, and never took any action which was in any way unlawful. We never saw the Honourable Arthur Meighen all the time he was in Winnipeg. We never had an opportunity to meet him [...] On the 8<sup>th</sup> of June we learned from the Minneapolis papers that Mr. Andrews, Mr. Sweatman, Mr. Coyne and Mr. Pitblado had been appointed Deputy Ministers by the Dominion Government.
- BIRD: Had you interviews with those gentlemen?
- RUSSELL: We had interviews with them all during the strike [...] any time we met, Mr. Andrews and Mr. Sweatman

and the others [...] they were representing the Citizens' Committee.

BIRD: Now, it is charged that you and your co-conspirators were attempting to establish a Soviet government; what do you say as to that?

RUSSELL: We never attempted to form any sort of government.

BIRD: Will you elaborate that matter of this control you exercised?

RUSSELL: All we did was to act as negotiators between anyone who was acting towards a settlement. We had no power to make a settlement without referring it back to the delegates of those various organisations which came out on strike.

As for the conspiracy charge, Russell was clear that he was opposed politically to four of the other defendants: Ivens, Heaps, Queen, and Bray.

While Russell gave his evidence, Andrews had objected to the presence of the other seven defendants in the courtroom. He contended that the defence might call them as witnesses; thus, they should be removed from the room. Cassidy maintained that, since they were being accused on the same indictment as Russell, the seven men were entitled to hear the evidence. Metcalfe excluded the accused men from the courtroom, along with all other potential witnesses.

The moment Andrews had been waiting for arrived. An effective cross-examination of Russell would assure him a conviction. With a benign look on his face and, in his most ingratiating manner, he opened, "Mr. Russell, do you consider I have been unfair to you?" The question was potentially dangerous to Andrews and could have affected the outcome of the trial. Andrews had invited criticism on his role in the proceedings, and the court would have to allow even the most scathing answer. It was the chance of a lifetime for Russell, but Andrews' risk was calculated. He knew Russell very well and, as anticipated, Russell threw it all away. Unable to seize the opportunity, Russell gave a polite and innocuous response to Andrews' question:

RUSSELL: That is a relative term.

ANDREWS: Have I shown any hostility to you, personally?

RUSSELL: No, sir.

ANDREWS: From the time of your arrest until the present time, can you point to anything I have done which has been unfair?

RUSSELL: No. Not from the position you have been in.

Andrews was displaying his best and his worst qualities as a lawyer. With his keen understanding of human nature, he had shrewdly elicited admissions that his own conduct had been beyond reproach. At the same time, because of his personal involvement, he was dishonouring the long-respected tradition of an independent, unbiased Crown prosecutor. Few would have anticipated that Andrews could have obtained such an astonishing exoneration out of the defendant's mouth to be put into evidence before the jury.

It was the following series of questions, however, that would prove to be the most damaging:

ANDREWS: Do you recollect my speaking at great length to you and the members of the Strike Committee?

RUSSELL: Yes.

ANDREWS: I referred to the fact that I had always been friendly with labour, I had acted for the Trades Council, I had helped in the building of the Temple and incorporated the company, acted as their counsel, and had always been friendly?

RUSSELL: I remember you referring to that.

ANDREWS: And you believe that is true?

RUSSELL: Yes, from the knowledge that I have, you did those things.

The jury must have been surprised. The defence counsel had tried to convince them that the battle between the capitalists and labour was being continued in this courtroom, with Crown counsel representing capital; in fact, Russell's defence was built around this argument. Now, they were hearing how deeply Andrews had collaborated with the labour movement and that he had been a trusted labour lawyer.

As Andrews continued his cross-examination, Russell continued to damage his own defence:

ANDREWS: And at that meeting I even begged and beseeched you to call this strike off, claiming that you were wrong.

RUSSELL: Yes.

ANDREWS: And I pointed out to you that you had gone about it wrong, that you had encouraged men to break contract, that you had lined against you public sympathy, did I not?

RUSSELL: Yes, we denied it.

ANDREWS: I said that you had forced against you the provincial government by calling out the telephone operators?

RUSSELL: Yes, you made that statement.

ANDREWS: That you had lined up the civic authorities by calling out the firemen before the ink was dry on their agreement.

RUSSELL: Yes, that was your statement.

ANDREWS: You knew, for instance that at the time this strike was called the city was entering into agreement for a year ahead in their various departments.

RUSSELL: Yes, I heard it reported at the Trades Council.

ANDREWS: You knew at that time that large numbers of employees who were coming out on strike were bound under contract for a time not then expired?

RUSSELL: I knew that there were many bound contracts which had not expired, yes.

ANDREWS: You knew that when calling out the bread and milkmen –

It was at this point that Cassidy interceded in a desperate effort to rescue his client:

CASSIDY: You must not talk about his calling them out. He has told you already that they voted to come out. I must object to your putting the question in that form.

Russell should have been providing such explanations himself, but his manner in the witness box remained passive. Despite the interruption, the onslaught continued:

ANDREWS: You are a believer in the Russian Soviet system?

RUSSELL: I believe in the Soviet system, yes [...] I think the Soviet form of government is a fine form of government.

ANDREWS: We will read what your paper the *Western Labor News* —

RUSSELL: It is not my paper; or this article.

ANDREWS: But published in your paper for propaganda?

RUSSELL: I never published it. The editor of the paper published it.

ANDREWS: Now, do you know anything about a letter being put in the *Socialist Bulletin* of March 1919, to the returned soldiers?

RUSSELL: I told you, Mr. Andrews, I didn't know nothing about the paper. I was neither on the press committee, nor did I contribute any articles to the *Socialist Bulletin* at any time, so anything I know, if I saw the Bulletin I may have read it or did not read it. I don't read very many of them at any time.

As soon as Russell began to obtain some control, Justice Metcalfe interrupted:

METCALFE: If you get through this thing successfully, Mr. Russell, you had better look over the things that you send out.

RUSSELL: I didn't send them out.

- METCALFE: Or your party sends out.
- RUSSELL: I am not responsible for everything the party sends.
- CASSIDY: The Socialist Party is not on trial here.
- METCALFE: But Mr. Russell is. It is Mr. Russell's intention and Mr. Russell's idea that is being cross-examined. Mr. Russell's ideas may not be the ideas of the Socialist Party, but if he is unfortunate enough to derive unfortunate ideas by studying Socialism, that is not putting Socialism on trial, that is putting Mr. Russell on trial.
- CASSIDY: But this man is not being tried for his ideas.
- METCALFE: He is being tried for his intention, and his intention is expressed by his actions or by his conduct or by his writings or by his speeches. He may carry socialistic principles too far. A man who carries principles too far in so far as that is concerned, it is relevant. Proceed.
- ANDREWS: Does the Socialist Party of Canada know any country? Is it not true that there is no such thing as patriotism except the patriotism to the workers?
- RUSSELL: Patriotism to self comes first, always.
- ANDREWS: And that is one of your teachings?
- RUSSELL: Self-preservation is the first law of nature.

Russell hammered the final nail into his own coffin. His use of the words “patriotism to self” in support of self-preservation was one of the most unfortunate errors he made on the witness stand.

The cross-examination was grueling. At times, the defence counsel objected in an effort to protect their client, but the judge continued to accommodate the Crown: “Mr. Russell is a witness in the box. If you can get at what you think is the truth out of Mr. Russell, you are at perfect liberty to pursue it in as hard a manner as the rules of evidence allow.”

The cross-examination intensified and Andrews fired question after question, now with machine-gun intensity. Cassidy could do little to assist his client and his protests only aggravated the judge further:

METCALFE: What did he go in the box for?

CASSIDY: For the purpose of answering the charges in the indictment. My learned friend under the form of cross-examination is now putting him through what is commonly known as the third degree.

METCALFE: Now stop right there. Get on that line again, and out you go. This court is not permitting the third degree.

In the witness box, Russell would have to fend for himself and fared poorly at the task.

In closing, Andrews asked Russell if he was in favour of a general strike. When Cassidy reminded the court that being “in favour” of a general strike is not a crime, Justice Metcalfe’s response was chilling. “I think it is,” he said. Clearly, Russell was in serious trouble.

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## CHAPTER THIRTEEN

When Russell stepped down, the defence called the elusive Harry Daskaluk, the witness the Crown had previously chosen not to put on the stand. The defence wanted to get at some important questions. Most importantly, did he give perjured evidence at the preliminary hearing on behalf of the Royal Northwest Mounted Police? It was McMurray who examined the witness for the defence:

MCMURRAY: How old a man are you?

DASKALUK: Twenty-four years old.

MCMURRAY: Were you subpoenaed by the Crown to attend to give evidence at this hearing?

DASKALUK: Yes.

MCMURRAY: You did not come?

DASKALUK: No.