

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.

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## CHAPTER EIGHTEEN

**O**n 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.

Dixon went on to describe his actions during the strike and the meetings he had attended. He urged the jury not to depend on the haphazard recall of witnesses who had taken sporadic notes; instead, Dixon redelivered each of his speeches in full. Referring to the mass of literature entered as evidence, Dixon said, "So far as the majority of these documents is concerned, ninety-nine per cent of them I have never seen in my life and I do not want to see them again. I do not want to read that kind of literature even at the invitation of the Crown counsel."

Dixon forcefully made clear what he considered to be the crux of his defence:

I want to emphasise the fact that so far as liberty of opinion is concerned, that is what is on trial. Liberty of speech and the press have been secured by the fearless action of British juries and Canadian juries, and they can only be preserved by the same method [...] When I was arrested and charged with this crime, I felt somewhat annoyed. But when I started to study the law and history books to prepare for my defence against this false accusation, I then began to consider that after all, I have been thrust into rather illustrious company. I found most of those who had led the fight for freedom had at some time or other been arrested and charged with uttering some opinions, and a great many had been thrown in jail [...] This has produced the martyrdom of truth in every age and the world has only been purged from ignorance with the innocent blood of the men who have enlightened it.

Throughout history, men had been persecuted for defending unpopular opinions. Dixon drew from these examples to prove his own innocence: Socrates, who had been put to death for corrupting the youth with his teaching; Galileo, who had been jailed for his assertion that the sun does not move around the earth; Bruno, who had been burned at the stake for supporting Galileo's theory; Wendell Phillips and William Lloyd Garrison, who had been dragged by their necks through the streets of Boston for advocating the abolition of slavery. Dixon explained to the jury that Canada also had its martyrs:

Though [Mackenzie and Papineau] were driven from their own country as rebels [...] they have statues in Parliament grounds today and are considered fit subjects for the pen of the poet and the skill of the sculptor. Then there is Howe, who was prosecuted by the corrupt magistrates whom he exposed in his day. He successfully defended himself and I hope to perhaps follow his glorious example. He is now proclaimed Nova Scotia's noblest son. So when we look at the lines of men who have been persecuted on account of expressing certain opinions, I think I am justified in saying I have been thrust into a somewhat glorious company. I was not anxious to be thrust there, but having been thrust there, I am not going to be ashamed of the company, and I hope the company will not be ashamed of me.

The comparisons were apt and effective.

Galt was not satisfied with the pace of the address, and he tried to hurry Dixon along. Dixon justified the time he was taking: "You will realise that I

have not wasted a great deal of your time. Crown counsel has had the greater part of the time in the last two weeks.”

The judge demurred, “I will give you time, but you gave me an undertaking yesterday, or I would have sat last evening. We must get through the case today.”

Although there was no legal requirement that the trial be finished that day, Dixon was pressured. It was true that the Crown had the largest portion of the time in the trial. Furthermore, Dixon claimed to have omitted a great deal of his speech already. He asked for one more hour and the judge reluctantly agreed, although he warned that if Dixon had been a lawyer, he would have been much harsher.

After lunch, Dixon began by dealing with the articles for which he had been arrested. He denied that “Kaiserism in Canada” was seditious. In doing so, he explained that the forces against the strikers had been prepared, the mayor had the Riot Act in his pocket, and the horses trained in riot control were ready in their stables. The men who had shot at the crowd had obeyed the order of their commanding officer. “Someone behind them believed might was right – that is the essence of Kaiserism,” he insisted.

Dixon next discussed the article “Bloody Saturday.” He read the article line by line and challenged the jury to expose anything that was untrue:

Were the words really untrue? What about it? Was it Peace Saturday or Violet Saturday or Rose Saturday? I should think the heading aptly described it. ‘RNWMP Make Gory Debut.’ Did they? Noble riders of the plains? I suggest they were not engaged in the noble business of hunting cattle thieves and it certainly was gory business, for the ambulance wagons came down and carried away the wounded.

Furthermore, Dixon attempted to deflate Phillips’ dramatic opening statements. He employed rhetoric with impressive eloquence and craft:

As I said before, I think Mr. Phillips tried to be fair, but I ask you what would he do if he tried to be unfair, and he made the statement that the blood of that man who was killed on the Saturday is on the head of the man who wrote this article. I want to point out to you that the article was written after the man had been killed, and what could that article have to do with the killing of that man? Do you think that is a fair inference to draw from that article?

We should keep open the door with regard to ideas about social problems [...] The reason we enjoy our liberties now is because in the past, we let people speak out. The people had brains enough to see what was foolish and what was false, and sense enough to reject what was false and hold to the truth, and I submit that should be the basis of our public policy in Canada today [...] One learned man said, ‘We don’t send men to jail unless they have a guilty mind.’ I want you to look me square in the eye. You have watched me for two weeks and heard some of the articles I have written and the speeches I have made. Do I look like a criminal with a guilty mind? I ask you to think that over before you express your verdict [...] Let me have British fair play and justice for all. ‘All’ means everybody; there is no limitation to that. Once

again I say, if that is seditious, send me to jail. For so long as I am a free man, I will say, 'Let us have British justice for all.' [...] I believe His Majesty has been misled into prosecuting me. But I am not complaining. I have made my decision and counted the cost. I have decided that I would stand on the side of the poor people no matter what happens. I will be able to say with Henley,

In the fell clutch of circumstance  
I have not winced nor cried aloud;  
Under the bludgeonings of chance  
My head is bloody but unbowed

I am not seeking martyrdom or running away from it. I have all the natural feelings of a man. I like liberty and I like sunshine and good food, warm raiment, and a house to live in, and intercourse with my friends and my family [...] But you are not here to consider my personal feelings. An individual in this universe is a very small thing. We are only like the grains of sand; today we are here and tomorrow we are gone. You are here to consider the public interest, and take into consideration all the circumstances, remember your oath and your conscience, and use your judgement and give us your verdict according to the evidence which has been laid before you.

As Dixon spoke, there was perfect silence in the courtroom. His voice was vibrant with emotion as he leaned over the jury box, his eyes searching the faces of the twelve men. He urged them to weigh the evidence carefully. "I am asking you to deal with me as I would deal with you if I were sitting in that jury box and you were standing in my place," he said earnestly.

At the close of his address, Dixon's voice died to a whisper. Those at the back of the room had to lean forward to hear his final words:

I want to say to you, gentlemen, that whenever in the course of my life I have had to decide on a question of principle, there is one question I invariably ask myself – 'Now Dixon, supposing you knew you were going to die tomorrow, what would you do in this case?' I can tell you the answer to that question has been a very safe guiding rule regarding conscience. Now, gentlemen, I ask you to think in the same way, put the same question to yourself. What would you do in this case if you were going to die tomorrow? [...] Give your decision as you would if you knew you were going to be before the throne of your Maker tomorrow morning.

Dixon had made a memorable speech in his own defence. As the court adjourned for a few moments, many gathered round and congratulated him.

On February 14, Justice Galt turned his chair toward the jury box and began his charge: "Gentlemen of the Jury: You must be very glad indeed, as I am, after these fifteen days of trial, to at last come near the end, and be relieved from the onerous duties which have fallen on us all. The case which has called forth this exercise on our part is a very important one to the country."

Justice Galt began by impressing on the jury the seriousness of the crime. So serious a view, for instance, that the federal government had recently changed the penalty for the crime from two years to twenty years. The jury,

too, was to remember that in Dixon's case the charge was especially reprehensible because he was a member of the provincial legislature. However, Galt also gave Dixon his due respect:

The accused has conducted his own case, and I am sure you will agree with me in complimenting him very highly on the skill he has shown in conducting it. I do not think he could have readily found in Winnipeg a lawyer who could have done it any better than he has done it for himself. In that respect he has lost nothing, I am sure, in his defence.

There, the praise ended.

In addition, the judge attempted to explain the massive amount of literature entered into evidence so the jury might understand its relevance to the case:

Now as a rule it is not allowable when a man is being tried for one crime to give evidence of his complicity in some other crime [...] But, it is allowable to give that evidence where the question is with what intent did he do the second act, which he is being tried for. Was he really, as he says before you, endeavouring to honestly criticise things that were wrong and have them set right, or did he not in reality intend to stir up disaffection, hatred, ill-will, and so on among the people of this country.

Justice Galt went on at length to discuss the conspiracy and, in doing so, made an inexcusable error:

The evidence is uncontradicted; there is nothing against it; and it clearly shows to my mind the creation of the most infamous conspiracy I have ever heard of in Canada [...] [Dixon] was hand and glove with the men who were conspirators, such men as Ivens, Armstrong, and Russell – every one of them proved here before you to be seditious.

Justice Galt was referring to the fact that Russell had been found guilty of seditious conspiracy with other named defendants. But Justice Galt should have known better than to make such statements. At that very moment, Ivens and Armstrong were on trial in another courtroom. Yet, Justice Galt was telling a jury that they were proven guilty before a verdict had been delivered. Furthermore, the judge argued that if Dixon had not been a member of the conspiracy, he would have taken the position "that every honest man is bound to take if he hears and knows of a conspiracy, communicate with the authorities to have the criminals brought to justice?" He scorned Dixon for continuing to associate with Russell, Ivens, and Robinson. In closing, Justice Galt urged the jury to weigh the evidence carefully and to make a sound decision regarding Dixon's intent:

At that particular time this man Dixon writes these articles. Did he do so with honest intent of calling attention to certain abuses of the government or was he intending to

stir up those misguided men who were out to strike and perpetuate the hatred and ill will that had been already raised among the citizens. What was his intention? [...]

Consider the circumstances carefully; take with you what papers and books you like and weigh carefully, if you have not already pretty well made up your minds one way or the other, and if you have any reasonable doubt, it has got to be a really substantial doubt, not an imaginary one, you must give the accused the benefit of it [...] He is not being tried for conspiracy. He is being tried for writing three articles which may or may not, according to the view you take of them, be considered as seditious libel [...] It is quite possible that a man of not very refined tastes, still knowing how to write a little, might have written those articles with a sort of honest desire to clear things up; but Mr. Dixon has shown himself before you to be a man of much higher attainments than ordinary. He is able to quote to you from Milton and the Bible and various documents, showing that he is a student and a well-educated man. The articles do not do him much credit in that respect, judged from the rough and ready style in which they are written and the expressions he has used in that 'Bloody Saturday' article [...] You cannot fail to bear in mind the circumstances to which I have drawn your attention, or the horrors imposed upon this city and from which we were only saved by the pluck and courage and self-denial of the citizens who did not belong to the unions. Now you will retire and consider your verdict.

Upon resumption later that evening, the foreman on behalf of the jury asked that they be given until Monday, February 16 to further consider their verdict. The request was granted and the jury went home for the weekend.

On the morning of February 16, the atmosphere in courtroom No. 2 was tense. Every seat was filled, and there were numerous spectators standing at the back of the room. Inside the courtroom and in the corridors of the courthouse, voices were hushed. When the jurymen filed into their box, nervous whispers ran up and down the room like electrical currents. When the jury was seated, Dixon arose from the counsel's table and proceeded to the prisoner's dock. It was the first time since the beginning of the trial that he had sat in the prisoner's box.

Everyone stood as the judge walked to the bench, and there was a short scuffling and thumping as those in the room returned to their seats. The clerk of the court rose in the silent courtroom and completed the roll call of the jury:

"Gentlemen of the Jury, have you agreed upon your verdict and if so who shall speak for you?"

"We have," said the foreman.

"How say you; do you find the prisoner guilty or not guilty? On the first charge?"

"Not guilty."

In response to the verdict, loud cheering and hand clapping broke the silence in the room. The court attendants called for order in the court. For a full minute, the attendants pleaded for quiet. Justice Galt banged his gavel and

threatened to have the courtroom cleared if there was any further disturbance. After a moment, the noise subsided and the clerk continued: “How say you on the second count?”

“Not guilty.”

“How say you on the third count?”

“Not guilty.”

“And so say you all?”

“Yes,” intoned the jury.

The news spread quickly to the hallways and into the streets. In the nearby legislative building, Dixon’s colleagues quickly learned that his seat would once more be occupied.

Before dismissing the court, Justice Galt undertook a somewhat unjudicial function. Although he was a man who stood innocent in the eyes of the law, the judge delivered stern lecture to Dixon:

I would like to warn you for the future against engaging in such transactions as you have taken part in – they lend a bad colour to a man’s actions. I do hope that in the future you will cease to ally yourself with such men as those conspirators, for I can call them no less [...] I hope that never again will a man of your attainments, education, and power in the community come before the court on such a charge as this. You are discharged.

Wisely, Dixon made no reply to the judge’s inappropriate comments.

When Dixon stepped from the prisoner’s dock, the crowd quickly surrounded him. Few of his victories had been as tumultuous as this one. That evening, Dixon returned to his seat in the Manitoba legislature and actively participated in debate on a number of bills.

Dixon’s trial was a classic moment in Canadian legal history. Dixon had successfully challenged injustice; he defeated the angry forces of government and power to become thrust into what he earlier referred to as “rather illustrious company.” And although he did not know it at the time, his trial would mark the turning of the tide. Onward, the hysteria of the Red Scare began to pass, and the public gradually declined to react to alarmist statements.

Dixon was the featured speaker at a meeting at the Strand Theatre on February 22. The meeting was called to order by S.J. Farmer. As Dixon came down the aisle of the theatre, people rose to their feet to give him a thunderous ovation. Farmer introduced Dixon as “the fighter in the cause of labour who has just won such a notable victory over our enemies.” When Dixon came to the podium, the audience quieted down but, before he could speak, the crowd once again erupted into cheers. When the noise subsided, Dixon modestly attributed the applause to the victory of labour. He admitted, however, that he was only human and, therefore, was moved by the warm

welcome. He explained that the cause was greater than the individual and cautioned that there was danger when men think more of themselves than of the cause for which they are fighting. He told the crowd that labour had been in a fight for liberty – a fight that was lost. He accused the government of tearing out the heart of the Constitution and explained that, as a result of this butchery, labour now had less liberty than when the battle started.

On March 12, the Crown decided not to proceed with a case against Woodsworth who, like Dixon, had been charged with publishing seditious libel. Deputy Attorney-General John Allan sent a telegram to Woodsworth in Edmonton informing him of the decision: “The Crown intends to enter a stay in your case, speaking seditious words, hence it will not be necessary for you to appear in Winnipeg at all unless you are so advised.” One of the Crown attorneys working on the preparation of Woodsworth’s trial had advised that a conviction against Woodsworth would be unlikely: “If Dixon couldn’t be convicted, there isn’t the remotest chance of Woodsworth being convicted.”

The charges of seditious libel against Woodsworth included many of the articles that had formed the basis of Dixon’s charges. The charges also included two more articles written by Woodsworth that were relatively uncontroversial. One of the two articles contained an urgent plea for understanding: “All thoughtful men must think of the terrific cost [...] some way or another things must be pulled together [...] Possibly something might be done if the principals could only be brought face to face. In spite of the war of words in the newspapers, there are very reasonable men in both the camps.” In the article, Woodsworth argued for a commission with sweeping powers to remedy the situation. It was unlikely that these statements would have been considered seditious.

Woodsworth’s charges also included his use of quotations from the Book of Isaiah:

Woe unto them that decree unrighteous decrees, and that write grievousness which they have prescribed, to turn aside the needy from judgement and to take away the right from the poor of my people, that widows may be their prey and that they may rob the fatherless. And they shall build houses and inhabit them; and they shall plant vineyards and eat the fruit of them. They shall not build and another inhabit; they shall not plant and another eat; for as the days of a tree are the days of my people, and mine elect shall long enjoy the work of their hands.

By including the verses from Isaiah in the charges, the Crown subjected itself to ridicule.

Woodsworth owed his good fortune to Fred Dixon. In his trial, Fred Dixon rose above bias and injustice. Fred Dixon’s speech remains a timeless statement for freedom of speech and freedom of the press.