CHAPTER EIGHT

The preliminary hearing of the charges of seditious conspiracy against Russell, Queen, Heaps, Armstrong, Bray, Johns, Ivens, and Pritchard (Dixon and Woodsworth would be tried at a later time) opened on July 21, 1919 in police court. The preliminary hearing was before Magistrate R.M. Noble. Chief counsel for the Crown was Alfred Andrews and chief counsel for the defence was E.J. McMurray.

A preliminary hearing is a hearing of evidence presented by the Crown against the accused. The presiding magistrate determines whether there is sufficient evidence to commit the accused to trial. If the magistrate finds that there is insufficient evidence to warrant a trial, he will discharge. If committed, the Crown draws a formal indictment, specifying the offences based on the evidence. Each witness who testifies is bound by his evidence and can be cross-examined at the trial on possible deviations from the evidence given at the preliminary hearing.

The Crown aimed to prove that the Walker Theatre, Majestic Theatre, Market Square, anticonscription, and Labour Church meetings; the Calgary conference and the formation of the OBU; the strike and resulting riots; the permit cards; the *Western Labor News* and the literature taken from the defendants' homes, the Labour Temple, and the homes of radicals all over Western Canada were all part and parcel of a seditious conspiracy.

The defence counsel objected repeatedly to the irrelevance of the Crown's evidence. But Magistrate Noble correctly ruled according to the laws of conspiracy — evidence of anyone having done "anything in furtherance of the common design" was admissible, whether it was known to the eight men or not.

At the same time, the defence lawyers were having a difficult time obtaining answers from the Crown witnesses. For example, while cross-examining Edward Parnell, McMurray elicited a partial list of names of men behind the Citizens' Committee of One Thousand:

MCMURRAY: Who belonged to the committee?

PARNELL: A body of men banded together to keep law and order in this city and run the utilities of the city.

MCMURRAY: Was there a president?

PARNELL: A chairman, A.J. Godfrey. Other members included Mr. Pitblado and Mr. Sweatman.

MCMURRAY: And Mr. Coyne and Mr. Andrews?

Because Pitblado, Sweatman, Coyne, and Andrews were all lawyers retained by the Crown to prepare the case against the defendants, Andrews rose quickly to object to the question. Andrews argued that such evidence "cannot be relevant and it takes up time." Magistrate Noble sustained Andrews' objection.

McMurray persisted with his line of questioning. He explained that the accused men viewed the strike as a dispute between labour and capital. According to the defence, the Citizens' Committee was manufacturing rebellion and using the courts as a weapon to fight the labour movement:

> We want to get into the workings of the Citizens' Committee. A great deal of what was done may have been fomented by the Citizens' Committee [...] We have a right to go into every hole and corner of this city, and clean it out, and sweep it up, and let the sunlight in and show that there was never any intention on the part of these men to subvert the government. In that way, we assert, the dealings of the Citizens' Committee are exceedingly important. If they were the fomenters of the trouble that occurred, surely that is pertinent to the enquiry.

Magistrate Noble was adamant: "I will allow you to ask all these questions, but I do not wish you to go into the names of the private citizens who were there."

Despite a reasonable argument, McMurray was unable to garner answers. In fact, the magistrate upheld most of the Crown's objections to questions raised by the defence counsel. These rulings stopped the defence from exposing the Citizens' Committee of One Thousand's role in preventing an early settlement of the strike.

At the close of the Crown's case four weeks later, McMurray announced that the defence would not be calling any evidence. And, knowing it would be futile, he did not argue for discharge on the grounds of insufficient evidence. "I suppose on the evidence that has been given, you will find they will be committed for trial," he asked the magistrate. As anticipated, Magistrate Noble concurred.

Because the accused men were still on the bail that had been arranged when they were released from prison in June, McMurray asked if the magistrate would withhold committal until new bail was arranged, this being usual practice. Andrews interrupted and asked for an adjournment until the next morning. The magistrate granted Andrews' request.

The procedure in court the next morning was unexpected. Magistrate Noble entered the courtroom. Without calling on Andrews to state the position of the Crown or addressing McMurray's request to allow the defence time to arrange bail, Magistrate Noble made a surprising announcement:

"The accused will be formally committed for trial at the next court of criminal jurisdiction."

McMurray was astounded. Despite his request, the bail question remained unresolved and, as a result, the men would go back to jail. McMurray protested, "This is such an unusual proceeding [...] The trials I have ever been on [...] have always been conducted under the Attorney-General's department. I understand it is not so in this case, and my learned friend is communicating with some department in Ottawa as to the granting of bail."

The magistrate remained firm. "As far as I am concerned this sitting is over. I have no power in the matter of bail," he announced.

The preliminary hearing made a strong impression on one observer, whose article appeared in the first issue of the *Defence Bulletin*. The first paragraph of the article explained that the writer was keeping his identity hidden due to his fear of a jail term for contempt of court. He had been attending the preliminary hearing for three weeks and was appalled by what he had witnessed:

> But those of us who are attending at all regularly are not wasting our time, for we are learning things that most of us never heard before [...] It appears that if a striker, in the recent strike, played a trick on somebody, or my wife ran short of milk for a day or two, that can be used as evidence against somebody who lives at Vancouver or Prince Rupert, and possibly knows nothing about the strike, providing that he attended the now-historical OBU convention in Calgary earlier this year.

The anonymous writer's rueful description of the proceedings correctly recognised that the law does allow a wide range of evidence in a conspiracy trial. A conspiracy charge has a peculiar effect on the rules of admissibility, and evidence that would not ordinarily be permitted is allowed.

McMurray applied to a county court judge for an order authorising bail. In private conversations on the subject of bail, Andrews told McMurray that he was "communicating with Ottawa and was awaiting instructions on the position the Crown would take at the hearings."

The next day in court, Andrews advised Justice John G. Patterson, the county court judge, that the Crown would neither oppose nor consent to bail. However, he contradicted this statement afterward and outlined several reasons why the men should not be released. Although he had the power to decide, Justice Patterson was reluctant to make a ruling. He did not refuse bail, but "considering the importance given to the case and the fact that it had been featured so much by the daily press," he preferred that a judge of the Court of King's Bench handle the matter.

It was the summer recess and judges were hard to find. Justice Cameron of the Court of Appeal agreed to hear the bail application in the Court of

King's Bench. Once again, Andrews argued against the granting of bail, insisting that the accused men had continued their campaign even during the preliminary hearing. In his effort to sway the judge, he read the conclusion of the *Communist Manifesto* and told how Pritchard, at a recent meeting, had advised the audience to purchase and study this document. Moreover, he criticised the defence for describing the document as a harmless and innocent historical text.

Justice Cameron was uncertain. "The point is that by sending those men to jail by refusing them bail, their families [...] owing to the very high cost of all necessities of life, might suffer [...] very serious inconvenience, but on the other hand, by allowing them their freedom, there was the danger they might continue their campaign," he explained. In his chambers, Justice Cameron advised the lawyers that he would consider the matter overnight. He allowed the men their liberty on McMurray's undertaking that they would appear in court the next morning.

Meanwhile, the accused — waiting for over an hour in the courtroom under the guard of the Mounted Police — were becoming impatient. Alderman Queen berated Andrews, "Why in hell don't you get this matter to a head. What is all the fussing about anyhow?"

On Thursday, August 14, Justice Cameron delivered his judgement regarding the issue of bail:

> I am convinced that the plain intention of Parliament was to confer the widest possible discretion upon the judge. I must consider the nature and gravity of the charge; recent events in the history of this community and its present circumstances; the character of the evidence brought out at the preliminary hearing; and the conduct of the accused from the time they were released from custody after their arrest. No understanding is now offered that the accused will refrain from continuing to make public utterances which may be essentially repetitions or elaborations of those under the investigation of the magistrate at the preliminary hearing and which are to be placed before a jury in due course. It is the fact that such an undertaking was previously given by the accused and not adhered to. The reason or excuse assigned for this repudiation of a solemn obligation cannot be entertained.
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> On consideration of the whole matter as it is presented to me, in view of the vitally important issues from the standpoint of the public that are involved, and having in mind the attitude and conduct of the accused throughout, I am of the opinion that I must decline to make the order sought on this application.

Once again, the defence was dealt a disappointing blow.

Thwarted at every turn, McMurray exceeded his function as defence counsel and issued a statement to the press describing the bail hearings. He criticised Andrews for claiming that he would leave the matter of bail in the judge's hands:

> That would have been very satisfactory if he had done that, but after deliberately stating his attitude, he then urged every reason he possibly could think of in opposition to bail being granted [...] In conclusion I may state that it came as a matter of great astonishment to me to find the court refusing bail.

Despite the contradiction, Andrews had launched a convincing argument. Bail was denied and, as a result, the accused men were returned to jail.

McMurray filed an appeal and two more weeks of frustration followed. On August 29, the Defence Committee summarised the situation in the *Defence Bulletin*:

> It has proved impossible up to date to get the Court of Appeal together. It is vacation time and there is no business to bring the court into session unless a meeting can be arranged to suit the convenience of the members. So another week has been added to the imprisonment of the accused without remedy in spite of unrelaxed efforts to secure bail.

The men were desperate for a quicker solution and, led by Dixon, their supporters were thrust into action.

As president of the Winnipeg branch of the Dominion Labour Party, Dixon called a mass meeting on August 31 at the Winnipeg Roller Rink. He told the crowd that representatives of the Winnipeg Trades and Labour Council and the Defence Committee had reached a unanimous decision: all Canadian labour organisations would be called upon to boycott the government's Industrial Conference scheduled for September 15 in Ottawa, unless the accused men were granted bail. He also asked organised labour throughout Canada "to take a holiday" for twenty-four hours on September 17 to protest the decision. Newspapers spread the ultimatum across Canada. The next day, a protest parade was held in Winnipeg and buttons were sold to raise funds for the Defence Committee. In addition, a series of protest meetings were called for the following Sunday.

When the bail hearing finally opened in the Court of Appeal, McMurray repeated his argument to have the accused men released on bail. Andrews again stated the neutrality of the Crown, but then proceeded to argue against the granting of bail. After the arguments, court adjourned. The decision was reserved and would be announced at a later date.

Finally on September 10, the Court of Appeal was ready to deliver its judgement. Chief Justice Mathers read the decision:

> Because of the great public interest involved in this prosecution, and because bail has once been refused by a brother judge, I asked my brothers, Macdonald and Metcalfe, to sit with me while hearing this application and had the satisfaction of knowing that both concurred with me in the views here expressed.
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> No evidence was adduced before upon which I could find either that the accused would not likely appear for trial if granted bail, or that permitting them to be at large

> on bail would be likely to endanger the public peace, if that be a proper matter for consideration, as to which I express no opinion. Under all the circumstances, I think bail should be granted. If when at large they, or any of them, do anything which brings them within the ambit of the criminal law they may be rearrested upon that new charge.
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> I, therefore, order that the accused be admitted to bail in the sum of $4,000 each and two sureties of $2,000 each.

Apparently, Dixon's efforts to "rally the troops" had paid off. After twenty-six days in jail, the men were to be released.

As soon as court adjourned, McMurray and the bondsmen left for the Vaughn Street jail where the formalities were completed. While the expectant crowd in front of the jail waited for the men to be released, McMurray stepped out of the doorway and appealed to the people to make no undue demonstration when the defendants appeared.

Bill Ivens was the first to be released. The sight of him in the doorway signalled cheers from the crowd, estimated at over fifteen hundred people. Someone started singing "For He's a Jolly Good Fellow" and the melody was immediately taken up by the masses. Ivens was carried around the square in celebration. Afterward, he mixed with the crowd to shake his supporters' outstretched hands. His sojourn in jail had not been all that bad, he said. "I've gained eight pounds in the time that I have been here and I think that I will go out and rob a bank to get back in, they treated us so well."

John Queen appeared at the doorway to be met by his wife. Abe Heaps, George Armstrong, Roger Bray, Bill Pritchard, Dick Johns, and Bob Russell emerged together. A photographer took a picture of the men in the alley against the wall of the jail.

The eight men were carried on the shoulders of the enthusiastic crowd to waiting automobiles. Followed by a long line of pedestrians, the automobiles proceeded down Portage Avenue to Armstrong's home. In the front yard, each of the defendants made a short speech, extending hearty thanks to the members of the labour organisations who fought for their release. It was a small and fleeting victory.

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