

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.

- MCMURRAY: And you were brought here this morning under a Bench Warrant?
- DASKALUK: Yes.
- MCMURRAY: At the preliminary hearing I believe you said that you were employed by the North West Mounted Police to give evidence?
- DASKALUK: Yes.
- MCMURRAY: You joined them in the month of March?
- DASKALUK: Yes.
- MCMURRAY: And you continued with them until what time?
- DASKALUK: Until about May.
- MCMURRAY: And then they laid you off?
- DASKALUK: Yes.
- MCMURRAY: Why did they lay you off?

It was a crucial question, but McMurray never received his answer.

As Daskaluk gave his evidence, Andrews repeatedly objected to questions that he deemed irrelevant. The defence explained to the court that it was attempting to show that Daskaluk gave false evidence at the preliminary hearing of this case. Furthermore, the defence hoped to expose the conduct employed by the Crown in connection with the witness. In response, Justice Metcalfe said that he did not think he would be doing his duty if he allowed the witness to answer questions aimed at discrediting the Crown.

Cassidy argued with Justice Metcalfe, insisting that it must be relevant to show that “evidence coming from a certain source is tainted.” Referring to the affidavits filed by the defence, the judge refused to hear the evidence. In fact, he attacked Daskaluk’s credibility altogether: “The material before the court shows that this man is a perjurer, so why should I give you latitude in the examination of such a witness?” McMurray insisted that if the defence could establish that, during the preliminary hearing, the Crown witnesses gave false evidence, this would affect the credit given to the other evidence:

- MCMURRAY: I think the Crown should disclose fairly and squarely to the court all the evidence so that the jury may give proper weight to it.
- METCALFE: I don't think the Crown should put a witness in the box who is either a perjurer or a liar.
- MCMURRAY: I think we can show through this witness the system that the Crown had of bringing witnesses here [...] surely My Lord, that is relevant.
- METCALFE: To go into the system employed by the North West Mounted Police does not meet with my approval.
- MCMURRAY: It is not for the Crown to get a conviction by resorting to any means.

The argument ended when Cassidy said that he would take over Daskaluk's examination. Defeated, McMurray returned to his seat.

Cassidy's efforts at examining the witness were equally unsuccessful. Justice Metcalfe prevented most of Daskaluk's testimony from being heard:

- CASSIDY: Now when you started out from Vancouver to come here on your subpoena, that was for the purpose of giving evidence at this trial.
- DASKALUK: Yes.
- CASSIDY: Before you got the warrant you came up – what did you come up for then?
- METCALFE: Don't answer.
- CASSIDY: Who did you meet when you got here?
- METCALFE: Don't answer.
- CASSIDY: I don't ask you any names but had you interviews with persons representing the Crown as to the evidence you would give at this trial?
- METCALFE: Don't answer.

CASSIDY: Now, you had a subpoena in your pocket all the time which described the place you were to come to?

DASKALUK: Yes.

CASSIDY: But you did not come, did you?

DASKALUK: Yes, I did come.

CASSIDY: Came here to the courtroom? But you were brought on a warrant the other day and that is the first time you came – were you here at the start of the trial?

DASKALUK: No, I was there three or four days ago.

Subpoenaed witnesses usually report to the Crown, but Andrews had told the court that he could not find Daskaluk. When did Andrews know that the witness had been in the courtroom?

Recognizing danger, Andrews changed the subject by objecting to the presence of possible defence witnesses in the courtroom. Justice Metcalfe sustained the objection and, when all witnesses were removed, he instructed Cassidy to continue with his examination.

Feeling the futility of proceeding, Cassidy said, “My Lord, I have exhausted my repertoire.” The Crown did not cross-examine Daskaluk. The witness left the courtroom without getting his evidence into the trial.

Fred Dixon was the next witness to take the stand for the defence. He was not a man who could be easily manipulated in cross-examination. Eloquent and expressive, much was expected of him.

Once seated in the witness stand, Dixon gave a brief account of his background. He told McMurray that he was a member of the legislature who, in addition to this responsibility, sold life insurance and did some farming. He was elected to the legislature on an independent ticket and was not a member of any socialist party. Furthermore, he explained that he was not connected with the OBU or a member of the Winnipeg Trades and Labour Council. In fact, he was president of the Winnipeg branch of the Dominion Labour Party, which was an organisation that Russell opposed.

When his objectivity was firmly established, McMurray proceeded to question Dixon about his participation at the Walker Theatre meeting:

DIXON: I was there.

MCMURRAY: Did you take part in it?

- DIXON: Yes, I spoke on the resolution in favour of liberating political prisoners. I was there from the beginning to the end.
- MCMURRAY: Was there advocacy at that meeting of violence and disruption and bloodshed in Winnipeg by any of the speakers?
- DIXON: It was just an ordinary meeting passing a few resolutions to send to the Government.
- MCMURRAY: Was there any advocacy of violent measures?
- DIXON: No. The only reference I remember to bloodshed at all was when Mr. Russell said something to the effect that it would be possible to avoid bloodshed in Canada because the workers were getting educated and intelligent and we need not do that.

Dixon's demeanour on the stand contrasted sharply with that previously displayed by Russell. He was assertive, articulate and, most importantly, determined to get his facts into the record.

McMurray asked Dixon about the meeting in which it was decided to post permit cards on the delivery trucks:

- MCMURRAY: Who did you see there?
- DIXON: Mr. A.J. Andrews, J.A. Botterill, Mayor Gray, Alderman Queen, Alderman Fisher, R.B. Russell, James Winning and Alderman Heaps and one or two more. It was suggested by the employers that the men should get permission and it was suggested that the members of the strike should give these cards.
- MCMURRAY: Who was this suggested by?
- DIXON: By Mr. Parnell [...] and in the hurry they suggested fixing up the card business, but there was no formal discussion by those present.

Dixon's testimony refuted the notion that the Strike Committee had issued the permit cards without consultation with civic officials. Rather, even the representatives from the Citizens' Committee, including Andrews, were in support of the permit cards at the time.

Referring to his notes, Dixon began to describe other meetings he attended at City Hall, but Justice Metcalfe interrupted:

METCALFE: When did you make these notes?

DIXON: I made these at the time, My Lord, these are longhand notes I made at the meetings.

METCALFE: Was anything said about cards?

DIXON: Yes, they were up for discussion and Mayor Gray said that these cards will have to come off, that they had been misunderstood. Mayor Gray said, 'All over Canada we are being misrepresented and we have to get these cards off.' Mr. Andrews says, 'You strikers are like the Germans attacking the Belgians; we say you have done wrong; you have a chance to retire gracefully. Either society is to be overturned or we have got to make a stand.'

Andrews also told the Strike Committee representatives, 'If your attitude is that the causes [of the strike] have to be removed, you will have to wait till the Millennium [...] Legislation should be passed guaranteeing the right of collective bargaining accompanied by Dominion Law making violation of agreements by unions a criminal code offence.' But he was unwilling to make such a recommendation in the present circumstances [...] 'I will not make a bargain that I am forced to make by the conditions we are in. I will not negotiate until the men on public utilities are back. You are wrong. I will not bargain.'

Andrews repeatedly objected to Dixon's evidence on the City Hall meetings, but McMurray argued that these were the same meetings that Andrews had referred to in the Crown's evidence. Justice Metcalfe allowed Dixon to continue.

Dixon described the active role that the leading Crown counsel had played at meetings crucial to settling the strike. According to Dixon's notes, Andrews had referred to the members of the Winnipeg Trades and Labour Council as "well intentioned." Furthermore, Dixon testified that Andrews had been present when Mayor Gray reported to City Council that the Citizens' Committee did not want a settlement:

Alderman Heaps asked him [Mayor Gray] if he had seen any of the Iron Masters and the Mayor said he had seen three of them and put before them the form of settlement and they said they could not open negotiations because they were in the hands of the Citizens' Committee.

According to the notes taken at another meeting, Andrews had refused negotiations until postmen, firemen, and police went back to work and an assurance was given against a sympathetic strike. Yet, when Russell asked for his assurance, Andrews said, "We cannot give you any." Dixon's notes and testimony were finally providing the jury with a different perspective of the strike negotiations.

Dixon continued to attack Andrews. He told how one man, Carrol, tried to act as mediator between strikers and the Citizens' Committee of One Thousand, but was thwarted by Andrews. Dixon read from his notes:

He [Carrol] says, 'The question has resolved itself into a question of who should yield, but I can't see that the [labour] men are wholly responsible. The employers must yield some.' Mr. Andrews said, 'This is not a case between employers and employees.'

As expected, Andrews was rattled by the testimony and made an attempt to stop the matter from being explored further:

My Lord [...] if we are going to try the merits of the position taken by myself [...] in refusing to talk settlement until they had restored the utilities, put on the milk and bread and so on, if we try that question here, I am prepared to meet it [...] but I don't think we are trying that. We are trying the question of seditious intention.

In response, Justice Metcalfe asked McMurray to explain the relevance of the evidence. "What I am trying to prove is the real intent of Russell and those accused with him at this time, whether they intended a revolution; whether they intended a strike," replied McMurray. Again, McMurray was permitted to continue.

Satisfied that his previous point was made, McMurray asked Dixon to describe the parade activity during the strike. Dixon testified that the Strike Committee did not organise parades. Rather, the returned soldiers acting in sympathy with the strikers held the parades. Dixon insisted that every participant was a returned soldier. "They examined them for their button or discharge papers; they wouldn't let them in otherwise," he explained. McMurray sought further clarification on the matter:

MCMURRAY: It has been alleged by the Crown through every witness that these parades were accompanied by vast numbers of foreigners, who walked along beside them, supporting them by demonstrations?

DIXON: I would say that was false. As far as I saw the parades, the parades themselves were composed of returned soldiers, marching in fours, in perfect order.

Specifically, Dixon described the soldiers' parade that occurred on June 2 wherein a petition was presented to the Premier to request that new legislation be passed to recognise collective bargaining:

MCMURRAY: What answer did the Premier say to this?

DIXON: The Premier congratulated the soldiers on the way the resolution was presented, in a peaceable and gentlemanly way.

McMurray completed his examination. As anticipated, Dixon was brilliant and provided the defence with a new glimmer of hope.

Dixon had made a courageous decision. He had come voluntarily to testify on Russell's behalf at the risk of jeopardising his own case. Any evidence that the Crown obtained from him could be used against him in his own trial.

In his cross-examination, Andrews' first task was to discredit the defence's portrayal of Dixon as an independent and objective witness:

ANDREWS: Insofar as you have expressed opinions here, I may take it that your sympathies were with the strikers?

DIXON: That is your opinion.

ANDREWS: Were you sympathetic throughout with the strikers?

DIXON: Most decidedly.

ANDREWS: You said you were engaged as a reporter.

DIXON: I volunteered my services as a reporter.

ANDREWS: That is, your services were given gratuitously?

DIXON: Yes.

ANDREWS: You wrote a good many articles for their papers?

DIXON: Quite a few.



- ANDREWS: Reports of the meetings which you attended, and which appear in the *Labour News Bulletin*, would be your reports?
- DIXON: Yes.
- ANDREWS: There were times when there was great bitterness in this strike – it was a fight?
- DIXON: It certainly was. What we wanted was collective bargaining and a decent wage.
- ANDREWS: It was the intention to give as much inconvenience as possible.
- DIXON: As far as the milk situation was concerned, you yourself admitted that the men were more than fair, that they came out in that meeting to settle for the bread and milk, and it was settled.

Dixon responded to each question with confidence. It seemed Andrews had finally met his match.

Andrews recognised the shift in power and, in an effort to regain control, he turned his attention back to Dixon's work as reporter. Upon witnessing the June 21 riot, Dixon admitted to writing two articles – "Bloody Saturday" and "Kaiserism in Canada" – for the *Strike Bulletin*. On the matter, the two men engaged in some skilful verbal sparring:

- ANDREWS: You take quite strong views, Mr. Dixon, on a good many subjects?
- DIXON: Something like yourself.
- ANDREWS: You took very strong views on this war?
- DIXON: Yes.
- ANDREWS: You took a strong view on the legislation that was passed?
- DIXON: That is right.

- ANDREWS: You refused to comply with the law in connection with registration?
- DIXON: I did not [...] when it did become law why I signed my card.
- ANDREWS: Your attitude, however, in connection with the war [...] was very much resented by a certain class in the community?
- DIXON: I don't doubt that, just the same as the attitude of profiteers was resented by a certain class.
- ANDREWS: You were even assaulted on one occasion?
- DIXON: I was. Four of the men who assaulted me have apologised since.
- ANDREWS: And a large petition was presented asking for your resignation [from the legislature]?
- DIXON: Correct.
- ANDREWS: You didn't think it was sufficiently largely signed?
- DIXON: Correct again.
- ANDREWS: And you didn't resign?
- DIXON: I did not.
- ANDREWS: That is all.

Andrews concluded his cross-examination and sat down, but Dixon was determined to have the final word:

I think I am entitled to make an explanation since my attitude on the war has been introduced [...] When the Registration Act was passed I signed my card, though still demanding conscription of wealth. I have taken that attitude right long. I am not ashamed of it. I still remain with that attitude.

With his position regarding war and conscription clarified, Dixon's testimony was finished.

The next defence witness was Thomas Herbert Dunn. He was the secretary of the Returned Soldiers and Sailors Labour Party formed during

the strike. He explained that the party had four thousand returned soldiers in its membership, all of whom sympathised with the strikers. McMurray sought to draw a clear line of distinction between the party and the Strike Committee:

- MCMURRAY: Were you acting under the instructions of the Strike Committee?
- DUNN: Absolutely no; none whatever.
- MCMURRAY: It was a separate organisation?
- DUNN: Absolutely.
- MCMURRAY: In sympathy with the strike?
- DUNN: With the returned men who were on strike and all those who were on strike.

Much of Dunn's testimony focused on the topic of parades. He defended Robert Bray's bold conduct while addressing the Premier on behalf of the organisation during one of the parades. Furthermore, he described how, prior to the June 21 riot, he had met with Andrews and Robertson requesting permission to hold the silent parade:

- MCMURRAY: What did you finally agree to?
- DUNN: We finally agreed that they were to have a meeting in the Industrial Bureau, where only returned men would be admitted.
- MCMURRAY: About that silent parade [...] was there any consultation with the North West Mounted Police before it was held?
- DUNN: There was in the Royal Alexandra Hotel. One of the comrades suggested that the Royal Northwest Mounted Police march ahead of this parade so that they would have a clear road.
- MCMURRAY: Didn't you know that it was dangerous to hold this parade? In view of the Mayor's proclamation?

DUNN: We had an idea that some consideration was to be given the returned men. It was a peaceful parade and we thought they would not do anything in any shape or form to interfere with us.

MCMURRAY: You did not expect to be shot down?

DUNN: Absolutely no. We thought that was all over.

Primarily, McMurray attempted to show that Russell and the strike leaders had no role in the parade and riots. In addition, those who accepted responsibility, certainly did not invite or even anticipate the ensuing violence.

In his cross-examination, Andrews was determined to discredit the witness. He started first by attempting to show that the parade was not organised by the returned soldiers:

ANDREWS: By the way, if this was to be a soldiers' parade, why were there women and children asked to take part in it?

DUNN: To my knowledge the women and children were never asked to take part in it. The only item was the statement in the *Free Press* which occasionally misquoted things.

Having not obtained a desirable answer, Andrews did not force the matter and instead the witness was dismissed.

Herbert Jones, one of the returned soldiers, was the next witness for the defence. McMurray sought to provide further evidence that the strike leaders could not be held responsible for the riots. Jones' evidence corroborated that of other defence witnesses, who said that less than five percent of the people around the Labour Temple were foreigners, and all the parades during the strike were conducted by the returned soldiers.

During cross-examination, Jones gave further evidence in favour of the strike leaders. Andrews pointed out the provisions of the Industrial Disputes Investigation Act and asked Jones if he knew the strikers were breaking the law:

JONES: I found out afterwards, yes.

ANDREWS: So you did not know of the provisions of this act when you went on strike?

JONES: I didn't, no.

In addition, Jones testified that he was present when Robert Bray addressed the Premier asking that collective bargaining be made compulsory. He insisted that he did not hear Bray call the government "spineless, emasculated ninnyes" as had been reported in the newspapers. As for Bray's address, he concluded, "I didn't see anything wrong with it."

The next witness for the defence was George Kalishman, a medical doctor. McMurray made yet another effort to implicate the Citizens' Committee of One Thousand:

MCMURRAY: Had you occasion to go to the office of the Citizens' Committee of One Thousand?

KALISHMAN: Yes, I had one occasion.

MCMURRAY: What did you go for?

Andrews objected. Once again, he reminded the court that the Citizens' Committee was not on trial. The defence was unrelenting:

MCMURRAY: We contend that the Citizens' Committee was never representative of the citizens of Winnipeg but a coterie of men waging battle against organised labour. We say they prohibited us from making settlement.

METCALFE: We have not anything to do with the Citizens' Committee [...] I have already expressed myself on this point.

The judge would not allow this line of questioning. Although the witness for the defence had only been on the stand for less than a minute, he stood down.

The next defence witness was John W. Wilton, a lawyer and a member of the Manitoba legislature. Although a brother-in-law of E.J. McMurray, Wilton refused to come to court and had to be subpoenaed. He was likely quite aware of how the trial had been proceeding to this point. His presence as a witness, rekindled the controversy:

MCMURRAY: What did you endeavour to do during the strike, Mr. Wilton?

ANDREWS: I object.

- METCALFE: Yes, I sustain the objection. What has Mr. Wilton to do with the strike?
- MCMURRAY: I may say I had great difficulty in getting him here, My Lord. What I propose to show through Mr. Wilton is —
- ANDREWS: Perhaps you had better not say what you intend to show.

With this line of questioning cut short, McMurray changed his approach. Instead, he sought Wilton's explanation concerning some of his conversations during the strike:

- MCMURRAY: Was that conversation [with James Winning] dealing with the question of adjusting and settling the strike?
- ANDREWS: I object.
- METCALFE: Yes. I don't see what authority Mr. Wilton had to do anything with regard to the strike.
- WILTON: I had authority on behalf of my constituents, I had that authority.

Wilton testified that he met with Mr. Barrett, one of the employers at the Industrial Bureau, the headquarters of the Citizens' Committee. With this disclosure, McMurray was poised for yet another question regarding the Citizens' Committee:

- MCMURRAY: Did you meet the Citizens' Committee or the executive of it?
- ANDREWS: This is of no interest to us whether he met the Citizens' Committee, or not.
- METCALFE: No. If an individual goes sticking his nose into the settlement of a strike, that matter is not to be brought before a Court of Justice.
- MCMURRAY: I submit with deference, My Lord, that if we can produce testimony to show that the accused and those associated with him were endeavouring by every

means in their power to adjust this strike, it is evidence that their intention was not one of revolution, and I submit it lets in a whole flood of light on the whole matter.

In order not to antagonise the judge, McMurray was using the word “adjust” rather than “settlement,” but it was to no avail:

METCALFE: Mr. Russell was in the box. You had every opportunity of asking him as to whether or not his efforts to settle the strike were upon an abandonment of the question of collective bargaining. You passed it over. You did not ask Mr. Russell. A settlement acceding to your demands is not a settlement.

MCMURRAY: I can show from this witness that if that one principle was settled, the rest would easily have been adjusted.

After some argument, McMurray concluded, “I don’t think I can get any further. The main thing I wanted from this witness was that a settlement could have been effected. These men were willing to settle.” Wilton was not cross-examined and stepped down.

The defence called its next witness, James Winning, the President of the Winnipeg Trades and Labour Council. McMurray attempted to show that Russell and his associates did not cause the strike:

MCMURRAY: What do you say about these men, Russell and his associates, bringing about the strike?

WINNING: The only thing I have to say, so far as these men are concerned, if they had been hidden in some crevice in the Himalayan Mountains, the strike would have gone on just the same.

MCMURRAY: You mean the rank and file of the workers were demanding a strike for better conditions?

WINNING: Absolutely.

When the witness explained that his council had no power to call locals out on strike, the judge commented, “It does not make much difference. I cannot force a man to go into a house to steal money, but I can assist him.”

As President of the Winnipeg Trades and Labour Council, Winning shouldered much of the responsibility for the strike activities and he openly acknowledged this on the stand. Risking his own arrest, Winning described his role in the strike:

MCMURRAY: Were you representing the Strike Committee through all these negotiations as to bread and milk?

WINNING: I certainly was. The accused and myself were working – well, we didn't cease working until we saw those bakers in the factory and we had to plead with those fellows at one o'clock in the morning to go back to work.

MCMURRAY: You took your full share of it; you had as much to do with it as anybody else?

WINNING: I certainly did.

Winning concluded his evidence by saying that one of the peculiarities of this strike was that “we didn't know where to go to get somebody to settle [...] in other strikes [...] we knew who we were fighting, but, apparently this time, the employers disappeared and we could not find them.”

Andrews cross-examined Winning. His first aim was to show Russell's active role in the strike. Winning continued to meet each question with tremendous courage:

ANDREWS: What part did Mr. Russell take in inducing the Council to take up the general strike?

WINNING: I don't know that Mr. Russell took any part at all. He may have spoken to the motion. If he did, I can't remember what he said.

ANDREWS: Mr. Russell, of course, is on trial here and we are interested in what he did [...] He was pretty active during the strike?

WINNING: He was as active as myself.

ANDREWS: He says he takes an active part in anything he goes into, is that so?

WINNING: As far as I know. If he has been appointed a



member of a committee, he has always been one of the best workers in that committee. I have never known him to be appointed to any office he didn't given them one hundred cents in the dollar.

ANDREWS: Do you recollect whether Mr. Russell urged the Council to come to the assistance of the Metal and Building Trades?

WINNING: No. I don't recollect that.

ANDREWS: If these notes of Mr. Robinson say that Russell said that 'unless the Council takes up this matter these men will go down to defeat,' that is probably correct?

WINNING: Yes.

ANDREWS: Does that bring the question to your recollection?

WINNING: Who said that?

ANDREWS: Mr. Russell?

WINNING: He probably would say that. That is the way I felt about it myself.

ANDREWS: Do you agree with Mr. Russell that the Reds did gain control of the Trades and Labour Council?

WINNING: Absolutely.

ANDREWS: You were not a Red, I suppose. Do you consider yourself a Red?

WINNING: No, I don't.

Winning admirably risked his own arrest in order to defend Russell's conduct and character.

It was at this point that Andrews, once again, attempted to absolve himself of any wrongdoing. He questioned Winning about Russell's release from prison prior to the June 21 riot:

- ANDREWS: You had some conversation with me about the release, had you not?
- WINNING: In the Royal Alex. Yes.
- ANDREWS: Do you recollect having some talk with me shortly after, at the same place, and congratulating me on the fact that they had been released before this riot, for fear it should be said that the riot had been caused by their being kept in jail?
- WINNING: Yes. I remember.

Andrews was being inconsistent. He objected vehemently whenever defence counsel referred to his role during the strike. But he did not hesitate to introduce himself into the proceedings when it served his purpose.

Justice Metcalfe was becoming increasingly impatient with a line of questioning that bore little relevance to the case. He interrupted Andrews' cross-examination:

- METCALFE: I would like to ask you something, because nobody seems to have dealt with it – who called the locals out?
- WINNING: There was a motion passed.
- METCALFE: Who called the locals out?
- WINNING: The locals were called out by a motion passed by the Trades and Labour Council that the general strike would go into effect at eleven o'clock on Thursday morning.
- METCALFE: Who called the locals out?
- WINNING: There was a motion passed by the Trades and Labour Council.
- METCALFE: Who called the locals out?

Justice Metcalfe was unwilling to recognise that a democratic vote had produced the general strike. Instead, he bullied the witness with a repeated question:

- METCALFE: Who told the locals when to come out?
- WINNING: That motion told the locals.
- METCALFE: Who told the locals when to come out?
- WINNING: I don't understand, I don't follow you.
- METCALFE: How did the locals know when to come out?
- WINNING: The locals would know by the reports of the delegates.

Unsatisfied with Winning's answer, Justice Metcalfe's hostility resulted in the inappropriate use of sarcasm and insult toward the witness:

- METCALFE: Perhaps he is of that class of man that Bray was talking about, 'spineless emasculated.' Proceed.
- MCMURRAY: I was thinking to myself – this was the most intelligent witness I have seen on the stand.
- METCALFE: Very intelligent. So intelligent that I can't get anything out of him, and I tried.

When Andrews approached the end of his cross-examination, the Justice Metcalfe posed his question again:

- METCALFE: Now, after all that, who called the locals out?
- WINNING: The Trades and Labour Council.
- METCALFE: Thank you.
- WINNING: By virtue of that motion that was passed there saying that the strike would take place at eleven o'clock.

Like Dixon, Winning would have the final word.

On December 22, the courtroom was crowded. The defence had called Attorney-General Thomas H. Johnson to the stand, and this unusual event attracted a high number of spectators. The defence was determined to investigate the role that the Province of Manitoba played in the trial. Andrews objected to the question and Metcalfe ruled in favour of the Crown:

MCMURRAY: Did your department take consultation with counsel, as to whether a breach of the law had been committed, a breach of the criminal law?

ANDREWS: Question objected to. The Attorney-General cannot be brought here and questioned as to what consultation he has had with counsel. It would be absolutely impossible for the State to carry on [with] the Department of Justice, if the law officers of the Crown should be brought here and interrogated on matters of this kind.

CASSIDY: Is this Province paying for this prosecution or is somebody else?

ANDREWS: I will certainly object to that. Nothing to do with this inquiry at all.

CASSIDY: It has everything to do with it, there is only one body according to the Constitution of Canada which has imposed upon it the administration of the criminal law, except of course, in such prosecution as may have to do with the revenues of Canada, and things of that kind, but ordinary criminal prosecutions for crimes are committed to the province alone [...] The suggestion we make, as Your Lordship knows, is that this is not a prosecution in the ordinary course, but that it is a prosecution that is being conducted and promoted by something in the nature of a vigilante committee. At all events, it is not a prosecution in the ordinary sense of law; therefore it is pertinent for us to know that fact.

METCALFE: You offer no authority [...] In the absence of authority, the objection is sustained.

Cassidy thanked the witness and the Attorney-General stepped down.

After Johnson's testimony, the defence made an announcement that would take the courtroom by surprise:

CASSIDY: My Lord, the defence cannot proceed further without adducing evidence in this case. There are many considerations which prevent our doing so,

one of which is that we don't get along very well with getting our evidence in, but there is another consideration for Your Lordship, and also for the jury, that to some extent animates me and makes me glad to think that the taking of evidence in this case is brought to a close. I would therefore say to Your Lordship that the defence closes its case, and I will be very glad if it suits the convenience of the court to go on and commence my address to the jury. It would take me a few moments to collect such documents and so on as may be necessary to address the jury. I suggest that I might be given until after lunch.

METCALFE:

I have had no time to make my preparation for my charge, and I will have to have preparation, so that without in any way desiring to limit anybody I would like to ask as to the time that will likely be employed, if it is possible for me to know, so that we can arrange the time between now and Christmas day.

The defence was closing its case without hearing evidence from many of its witnesses, including Heaps, Queens, Armstrong, and Ivens. The decision was premature and unwise.

Once the defence had made a decision to call evidence, it should have been done fully. The untried defendants were able speakers and capable of thinking on their feet. There were many uncalled witnesses who may have refuted the notion that a conspiracy to overthrow the government ever existed.

No doubt there was some thought that the jury might be more charitable and forgiving on the eve of Christmas, or there may have been concern that the jury might hold the accused responsible for spoiling their Christmas holidays if the trial dates stretched any further. Whatever the reason for the termination of the trial, it did nothing to advance the case for the defence. If Cassidy were truly stopping for the reason he stated – that is, not getting along with the judge – he would have served the defence better by resigning as counsel. It would have been better for him to leave the courtroom than to have gone on with his closing speech to the jury.

Despite his constant complaints against the Crown for their partial reading of documents out of context, Cassidy left this matter unchallenged. This would be his only opportunity to file the omitted documents in an effort to disprove the charges, but he made no such effort. It was imperative for Cassidy to provide some answer and clarification regarding the mountain of literature entered by the Crown. However, this required a tremendous

amount of reading and sorting to determine which documents should be filed. It is unlikely that Cassidy had done this work.

In addition, Cassidy left his nemesis, Alfred J. Andrews, virtually unscathed. The evidence demonstrated that Andrews played a substantial role in some of the strike events. For example, he participated in the meeting to decide on the notorious permit cards. Also, he was appointed a special representative of the Department of Justice and had many relevant conversations with Russell during the strike. If called to testify, Andrews would try to make damaging statements. However, it is unlikely that the damages would exceed those done by allowing Andrews to escape unchallenged. A skilful and persistent lawyer might well have exposed Andrews to criticism for his conduct and, at best, Andrews may have been forced to withdraw from the case. Why did the defence opt to keep him off the witness stand? Clearly, he should have been questioned, but Cassidy called no further witnesses.

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## CHAPTER FOURTEEN

In the afternoon, Cassidy rose to deliver his final address to the jury. All eight defendants were present in the courtroom, surrounded by well-known men in the labour movement. Attracted by the unusual proceedings, many of the city's lawyers were also in the crowd. Surprisingly, Senator Robertson was present and took notes while Cassidy spoke.

Cassidy's closing statements lasted three hours and fifteen minutes and displayed his ability as a public speaker. With emotionally charged language, he discussed the issues of the trial in broad generalisations.

At the onset, he explained that a state trial was different from an ordinary criminal trial, placing special responsibility on the court and the jury: "May it please Your Lordship and Gentlemen of the jury. We are assembled here on one of the gravest and most solemn occasions that has ever transpired in the legal history of this country."

Perhaps worried that his ongoing conflict with Justice Metcalfe may have negatively influenced the jury, Cassidy referred to his own controversial role in the trial. He explained how he had made the decision during the early part of the trial to object vigorously to the admissibility of irrelevant and prejudicial material: