CHAPTER NINETEEN

The trial of the remaining seven defendants has become known as the "trial of the strike leaders." Although their description as strike leaders is both inaccurate and unfair, the newspapers and even the defendants frequently employed this designation. In actuality, the trials were about far more than the strike and its leadership.

The trial began on January 20 in Courtroom No. 1, while Fred Dixon's trial for seditious libel was getting underway in Courtroom No. 2. Of those present for Russell's trial, E.J. McMurray was the only counsel retained to represent the defendants. Although he had declined to act for Russell, the Defence Committee had been successful in acquiring Robert A. Bonnar, Western Canada's most renowned defence counsel. A junior member of Bonnar's firm, Ward Hollands, was the third member of the defence team.

Robert Bonnar was a big man with an even bigger reputation. At the time, he acted as counsel for the accused in almost every sensational murder case in Canada. His fees were high, but he was a decent man and, if the situation warranted it, he occasionally represented clients who could not pay him for his services. In particular, Bonnar was renowned for his powerful cross-examinations, natural forensic abilities, and knowledge of medical matters. In general, he was highly respected for his skills and well liked for his good sense of humour and fairness.

Most likely, Bonnar would have been most comfortable with a case involving some sensational crime that scrutinized the basic traits of men and human nature. This case was quite different and would not allow him opportunity to make full use of his experience and abilities. He told the defendants at the outset that he did not think they had much chance for acquittal, but he was a fierce fighter.

Bonnar went on record as counsel for Roger Bray, Hollands was counsel for Dick Johns, and McMurray represented George Armstrong. The remaining four defendants — Bill Ivens, John Queen, Abe Heaps, and Bill Pritchard — would defend themselves. To the dismay of all defendants and their counsel, they learned that Justice Metcalfe was assigned to be their judge.

There was an interesting twist to the case now. Unlike the Russell trial wherein the defence counsel and judge were virtual strangers, Bonnar and Metcalfe were very well acquainted. In fact, for a short time, Justice Metcalfe had worked in a legal partnership with Bonnar under the firm name of Bonnar and Metcalfe.

The trial opened with a blaze of fireworks and excitement when defence counsel made several controversial motions. They asked for the indictment to

be quashed, for Justice Metcalfe to disqualify himself from hearing the case, for Crown counsel to be removed, and for the jury panel be set aside. In addition, John Queen requested that the venue for the trial be moved to another location.

Defence and Crown counsel agreed it would take considerable time to dispose of these motions. Justice Metcalfe advised that the jurors could return to their homes and would not be needed until January 26, 1920.

However, it did not take long to dispose of the first motion. Justice Metcalfe dismissed the motion to quash the indictment without hearing argument. He said that he had already ruled that the indictment was valid in the Russell case, and the Court of Appeal upheld this decision. As a result, he could not consider a different ruling. The defence moved to their next motion.

The next motion asked Justice Metcalfe to remove himself from the case. Such a motion is a rare and delicate matter to ask a judge. If lost, ill feelings may linger to cloud the atmosphere in the courtroom.

On Wednesday morning, McMurray began his argument. In a polite and careful manner, he suggested that the case be turned over to a new judge on the grounds that the Russell trial might have caused Justice Metcalfe to become "unconsciously prejudiced."

Justice Metcalfe was puzzled by the request. "If it's something unconscious, how am I to know about it at all?" he asked. Then, Justice Metcalfe pointedly asked McMurray if he was accusing the court of being biased. Cautiously, McMurray said that he was respectfully setting forth the facts for the court's consideration.

On Thursday, Heaps, Ivens, Queen, and Pritchard presented their similar arguments urging Justice Metcalfe to disqualify himself. Each of the men cited particular references made by Justice Metcalfe in his charge to Russell's jury that indicated some degree of prejudice.

Heaps argued that Metcalfe's comments to the jury implied that the judge considered him to be guilty, despite that fact that he had not yet gone to trial. Justice Metcalfe defended his remarks. He insisted that his statements were based upon the evidence before him and had likely been misinterpreted. Heaps replied that ordinary men like himself and the jury would not understand the judge's comments any other way.

After reading several of the judge's questionable quotes, Ivens told Justice Metcalfe that it would be of "highest courtesy" if the judge stepped down. Justice Metcalfe was adamant. "Duty must come before courtesy," he told Ivens.

John Queen focused on a comment the judge had made about George Armstrong. "I think you have convicted him by prejudicing him in the minds

of the jury," Queen said. "The tone in which Your Lordship addressed the jury and the references to some of the accused as Reds was also objectionable."

Similarly, Pritchard expressed his concern for the manner in which Justice Metcalfe had alleged that the defendants had come to Winnipeg for a special purpose during the strike.

Metcalfe defended his conduct in the Russell trial and insisted that he did not possess or demonstrate any bias: "Let us forget the Russell case. I was under great strain at the time and if any undue comment crept in, that is from your point of view, in my opinion it was justified by the evidence before me."

Ivens responded, "But, My Lord, I was not on trial at the time."

Despite the validity of the men's concerns, Justice Metcalfe remained firm. The defendants were equally determined and would not let the matter rest. At one point during the defendants' argument, Justice Metcalfe declared, "It's like a nightmare to me to have to take this case." It was clear the judge was offended.

As the argument continued, the judge repeatedly advised Ivens and Pritchard to obtain legal counsel. Ivens said that he would take the judge's advice under consideration, but Pritchard rejected the idea outright.

John Queen opted for a different approach to the matter and provided a new reason for why another judge should be brought in to hear the case. In the Russell case, "the defence was not what it should have been," he told the court. Because of the "indifferent defence" the judge had gained a wrong impression of the defendants. Queen argued that the defendants should have a fresh trial with a new judge, this time blaming the matter on the defence team.

Ivens agreed with Queen's statement and attempted to list reasons for his support. Justice Metcalfe interrupted him, saying he wanted only points of law to be argued, not "long statements of reasons." Ivens attempted to speak again, but was halted. "If you're going to keep on harping this way, I'll have to assign counsel whether you like it or not," the judge cautioned.

Before the court adjourned for the day, Bonnar made a motion to have the charge of common nuisance severed from the indictment and tried separately. He argued that the evidence of this charge would prejudice the accused on the other counts. The motion was refused. Bonnar advised that he would be introducing another motion the next morning asking for a trial at the bar. At such a trial, at least three judges would sit to hear the case. Indeed, the trial was off to a controversial start.

The next day in court was long and tiring. The defendants continued to argue for Justice Metcalfe's removal. At one point, Bill Ivens held up a legal

text as he argued some law. "My Lord," said Ivens, defending his efforts, "I have no desire to scab on the profession."

"Well I must say," retorted the judge, "that I'm afraid you wouldn't make much money." The defence counsel and the defendants raised valid objections to Justice Metcalfe continuing as the judge, yet he dismissed their concerns with wisecracks.

Justice Metcalfe countered the arguments by repeatedly calling for legal authorities showing he should withdraw. He had been assigned to this case in the regular course of his duty and claimed that there was no other judge available to take his place:

> If there is any legal way consistent with my duty in which I could retire, I should be very glad to be relieved of this work. So far as I know there is only one way. That is for me to telegraph my resignation at once. Then I should face impeachment for refusal to do my duty.

These excuses were weak. It is entirely proper for a judge to withdraw if he feels it is inappropriate to hear the case for any reason. In fact, it is his responsibility not to sit on a case if there is a perceived conflict or a bias. One of the reasons judges are appointed for life is to give them security, regardless of the decisions they might make in the course of their being a judge. Furthermore, if another judge was not immediately available, the case could have been adjourned until one was free. Or, if necessary, a judge from the Court of Appeal could have come down to sit. Regardless, the motion to disqualify Justice Metcalfe was refused.

Next, McMurray argued for the removal of Crown counsel, describing them as "not fit and proper persons to conduct the case for the Crown."

Judge Metcalfe commented on the unusual nature of the motion: "Unless you can show me some precedent, Mr. McMurray, for this motion, I can't hear it." In response, McMurray said that he had evidence and authority to back up his argument. As a result, the defence was permitted to proceed.

McMurray presented affidavits filed by the defendants stating that "Alfred J. Andrews, together with Isaac Pitblado, J. B. Coyne, and W. A. T. Sweatman, who are now appearing as counsel for the Crown, were among the leading and more active members of [...] the Citizens' Committee [...] which took a most active part in fighting and endeavouring to break the strike." The defendants did not believe that they could receive a fair and impartial trial from Crown counsel who had protested so loudly against their activities. It was certainly a valid argument.

Justice Metcalfe interposed, "I never saw any unfairness in the previous trial, Mr. McMurray, and certainly no objection was taken then. I will certainly permit no unfairness in this trial either."

McMurray responded by reading a quote wherein Andrews told the defendants that "he had instructions from Ottawa to refuse bail in any amount and under any conditions" and that if any of the defendants were admitted to bail he would lay fresh charges and have them promptly rearrested.

Andrews was on his feet in indignation, arguing that there was no validity in the motion. He accused the defendants of having ulterior motives, insisting that they wanted to take up time, to get into the newspapers and, by some manner or other, to get before the jury a lot of material which ought never to be brought up in this court. Justice Metcalfe agreed that the defence's tactics appeared to be suspicious, but he would not rule at the present time.

Proceeding, McMurray charged that *The Winnipeg Citizen* promoted unrest within the city. The editorship of the fiery newspaper, published by the Citizens' Committee, had been one of the best-kept secrets of the strike.

On this day, McMurray made a startling disclosure. He revealed that Roger Bray had sworn in an affidavit that Travers Sweatman was one of the paper's editors. Sweatman sat quietly in court as the accusation was raised against him.

The defence quoted lurid stories from the newspaper, with many of the articles painting horrifying pictures of bloodshed, panic, and revolution. *The Winnipeg Citizen* demanded the action, arrests, and deportation of those responsible for the strike. It denounced the unpatriotic war records of the arrested men; spread the false story that Sergeant Coppins, the war hero, was near death; and stirred the emotions and raised the temperature of the city to the boiling point. Most importantly, the newspaper was a clear demonstration of bias toward the defendants.

If it were true that Travers Sweatman was one of the editors, then his presence as Crown prosecutor was entirely inappropriate. Neither Sweatman nor any of the other Crown counsel denied the allegation. Their silence allowed them to stonewall the charge. Instead, the judge was left to deal with these allegations, and the Crown counsel trusted he would defend them. All Andrews had to do was keep quiet until the storm blew over.

In an interesting twist of events, McMurray also charged that Crown counsel were guilty of seditious conspiracy and accused the men of carrying their struggle to overthrow organised labour into court.

McMurray claimed to possess an affidavit from Fred Dixon stating that the Attorney-General of the Province of Manitoba had not retained the Crown counsel. A lengthy argument followed and Bonnar suggested that the Attorney-General be called to state whether the present counsel were under his instructions or not. In response, Metcalfe advised, "You must remember this fact. That the Attorney-General, Thomas H. Johnson was in the box and

that he took full advantage of every objection raised on his behalf by the Crown counsel who were acting for him. If you want to investigate the Attorney-General, go ahead and investigate him. But this Court is not the place." McMurray could give no authority for his argument. As a result, the judge ruled that he could see no reason for excluding the present Crown counsel on the grounds charged and would therefore not hear the motion further. The Crown counsel would not be asked to retire from the case due to a conflict of interest, and the defendants were prevented from showing how the prosecutors had been instrumental in shaping the events of the strike. With this early defeat, McMurray sat down.

Abe Heaps refused to accept the decision and rose to argue. He proposed a new motion that Crown counsel be disbarred for professional misconduct, arguing that the prosecutors were guilty of extreme partiality that would jeopardise the defendants' chances of receiving a fair trial. Heaps did not realise that the Manitoba Law Society was responsible for conducting such hearings, not the court. When the judge informed him of this, Heaps threatened to pursue the matter. When Ivens rose to join the argument, Justice Metcalfe interrupted, "I'm going to say right now that I'm not going to listen to laymen's arguments on matters of law." The defendants kept the court in an uproar and the day degenerated into one long legal wrangle that accomplished nothing.

The next day, McMurray began arguing another motion. He asked for the entire jury panel, consisting of 258 jurymen, to be set aside because of irregularities. He quoted from the Jury Act, which stated that the sheriff's roll of jurors shall not be inspected by or communicated to any person not employed in the sheriff's office except upon the order of the court or a judge. McMurray contended that a major irregularity occurred when Justice Galt improperly made an order allowing the Crown to inspect the jury list without giving any notice to the defence. There were lesser irregularities as well: affidavits had not been taken from excused jurors, names were improperly left off lists, and others were improperly added. There were ample grounds to disqualify the present jury panel.

Andrews disagreed and, quoting authority, argued that unless it was proven that "the sheriff or his deputies who returned the panel did so with partiality, fraud, or wilful misconduct," the jury panel must stand. The law cited by Andrews contemplates that the list of jurors should remain in the protected custody of the sheriff and his deputies and that any impropriety would be that of the custodians. It does not contemplate that the impropriety could be the actions of another person, in this case a judge. Justice Metcalfe was not ready to make a ruling regarding the motion and would consult with some of his "brother judges" over the weekend.

When court convened on Monday, Andrews declared that the sheriff and his deputy "resented very much" the charges being made against them. In order to clear their reputations, they requested an investigation. Andrews asked the court to select two "triers" to hear the charges. Justice Metcalfe appointed Henry B. Webster and Justice John G. (George) Patterson as triers of the investigation.

The defendants were not happy with the court's choices. Patterson was the county court judge who had denied them bail, and Webster had headed the Grand Jury that brought in the indictment against them. Ivens registered an objection to Webster on the grounds of prejudice, but Justice Metcalfe overruled the objection. His Lordship announced that the trial of the sheriff and his deputy would commence when the judges arrived in the courtroom.

While they waited, he allowed Queen to begin his argument on the motion for a change of venue. Queen was reading sensational headlines from Winnipeg newspapers when the judge interrupted, "We will let this motion stand over — Mr. Webster and Judge Patterson are in the building. Does anyone else want to make any motions?" There was quiet in the courtroom. "Any motions for the third and last time?"

"Don't bring down your hammer, My Lord," Bonnar joked. Queen's motion was stood over and the investigation began.

Deputy Sheriff Pyniger testified that on Friday, December 26 one of the Crown counsel brought an order signed by Justice Galt into the office. The order instructed the sheriff to allow Crown counsel to inspect the jury lists. Justice Galt had made this order without giving the defence counsel an opportunity to be heard. The deputy sheriff explained that he complied with the order and gave the jury lists to the Crown counsel on Saturday morning. Deputy Sheriff Pyniger then said that on the following Monday, Cassidy and Lefeaux were in the sheriff's office and were given a copy of the judge's order. This statement was a complete surprise to the defendants. If Cassidy knew of the judge's order, what had he done about it? Because Cassidy was not a criminal lawyer and was relatively unfamiliar with jury trials, he probably failed to appreciate the significance of the unusual court order that had been so casually handed to him. The witness volunteered more information. "I told Mr. McMurray that he could have a copy too. I wanted to be fair to both sides," the deputy sheriff explained. McMurray did not reply to Pyniger's statements.

Colin Inkster, the venerable sheriff of the Eastern Judicial District, took the stand next. He explained why the jury panel for the trial of the seven strike leaders was different from the jury panel for Russell's trial. Whereas, this trial was in 1920, the previous trial used the 1919 list. After McMurray

had concluded his examination, Justice Metcalfe proceeded to ask some questions:

METCALFE:	How old are you?
INKSTER:	Well, if it's necessary to know, I was born in 1843.
METCALFE:	How long have you been the Sheriff?
INKSTER:	Since 1876.
METCALFE:	Was the method used in drawing up this jury roll the usual one you had used for more than forty years?
INKSTER:	Yes.

Having illustrated his point, Justice Metcalfe asked the sheriff to step down.

McMurray called J.W. Hansen, a juror, to the stand. Hansen's name had been deleted from the jury panel. McMurray asked Hansen whether he was approached by anyone after he was summoned to appear on the jury panel, but Andrews immediately objected. Metcalfe upheld the objection, ruling that the question had nothing to do with misconduct on the part of the sheriff. "Are we trying the sheriff or challenging the array of the jury?" McMurray asked. Justice Metcalfe replied that the only way the jury could be challenged was by showing irregularities on the part of the sheriff or his deputy.

McMurray also called Sergeant Reames of the RNWMP to the stand. He asked what, in retrospect, might be considered the most vital question on this aspect of the case — did he or anyone under him interrogate any of the jurymen? Andrews objected. The judge upheld the objection, stating that the question was not related to the charges against the sheriff and his deputy. Although it did occur, the questioning of jurors by the RNWMP would not be exposed at the trial.

Despite his efforts, McMurray was unable to expose the extent of the jury tampering. Ward Hollands tried and, he too, was unsuccessful. Ivens gave up: "I think it is useless, My Lord, for me to ask any questions since Mr. Andrews has something to hide." Andrews jumped hastily to his feet asking the court to restrain the ravings of "irresponsible persons." He told the judge, "the defendants are trying to bring the courts of Canada into contempt."

But Ivens was right. In his letter to Senator Robertson dated Christmas Day, Andrews had stated, "I am obtaining the jury list today and I am making arrangements to secure the best possible information about these jurymen". An example questionnaire of twenty-five questions was prepared for the

RNWMP to investigate each potential juror. The following questions were included on the questionnaire:

i. How many children, if any?
ii. If sons, did they go to war?
iii. If they went to the war, did they go as volunteers or conscripts?
iv. Do they personally know any of the men being tried for sedition or are they friends or friendly?
v. What are his views as to the Union Government War Policy?
vi. Is he a Laurier Liberal, Conservative or Unionist?
vii. Is he a Socialist?
viii. Is he an OBU?
ix. Was he ever a member of a Union?
x. What are his views on Bolshevism?
xi. What does he think of Trade Unionist Leaders and their method during the last twelve months?
xii. What does he think of the Winnipeg General Strike?
xiii. What does he think of the Citizens' Committee of One Thousand and their work?
xiv. Does he blame the Government for taking methods to put down the strike?
xv. Does he blame the Government for the shooting which took place during the riot?
xvi. Is he well off?

The final question was to be answered by the officer investigating the potential jurors: "Do you recommend him for the position?" Indeed, Andrews did have something to hide.

Andrews argued that the defence had failed to show that there had been any misconduct on the part of the sheriff. He reminded the defence that Cassidy had been advised of the existence of Judge Galt's order. Justice Metcalfe agreed. Furthermore, Justice Metcalfe reminded McMurray that he had been offered a copy of the jury lists. McMurray, however, strongly rejected this claim:

MCMURRAY: I give Pyniger's statement an unqualified denial.

METCALFE: But you permitted him to make this statement in the witness box without challenge. I believe Pyniger.

Fuming, McMurray picked up his briefcase and walked out of the courtroom. The argument continued in his absence.

In his charge to the triers, Justice Metcalfe emphasised that trial by jury was a sacred thing. He repeated that tampering with the jury was contempt of court and anyone found guilty of it would be dealt with harshly. Justice Metcalfe instructed the triers not to question the legality of Judge Galt's order: "The order was made by a judge and the sheriff obeyed it." The triers retired but returned in less than five minutes. Webster announced the decision: "We find against the challenge and find that the array is good." The sheriff and his deputy were exonerated of any misconduct, the jury list was found to be properly drawn, and they failed to find any reason for which the accused could claim that their interests were prejudiced.

With the investigation over, Queen was allowed to argue his motion seeking a change of venue. He explained that he wanted to discuss his motion in two parts. The first concerned the extent of public prejudice against the defendants and the second, once again, involved jury tampering:

> I want to be tried in a less hostile atmosphere. The Crown counsel is hostile to us; we have reason to believe the jurors have been prejudiced against us. Even Wheeler the doorkeeper of this courtroom is hostile, questioning us and our friends before admitting us to the courtroom. We do not fear a fair jury, but if we have to break down the prejudice brought about by propaganda it is too much.

His Lordship interrupted Queen in this argument:

> You must have had this information last Tuesday when the assizes opened and you should not make this motion at this time. Somebody is trying to make a monkey of this Court. It's absurd, it's ridiculous.

Queen stated that he had a legal right to bring in such a motion at any time. A week of the trial may already have passed with all the motions, but Queen was making his motion at the beginning of the trial, before any evidence was heard and before the jury was selected. The argument continued:

METCALFE: It is burlesque to make this motion on the second week of the trial.

ANDREWS: This motion is entirely too late. The accused, Queen, is taking up the time of the court and his own energies.

Queen insisted that he did not wish to take up time of the court needlessly and pointed out that he was not learned in law and was undefended.

METCALFE: You are getting very great indulgence, Mr. Queen, and Crown counsel are quite right in objecting to the motion. Go ahead.

QUEEN: I do not want any privileges or favour from this court.

METCALFE: You are getting a very great indulgence.

QUEEN: That section of the Code states that I can make my motion at any time.

METCALFE: I know my duty, if you stand on the rights of the law.

Queen read extracts from Winnipeg newspapers that, he claimed, had convinced many people that there had been an attempt at revolution:

QUEEN: Is it possible in an atmosphere created in this city by the newspapers to get a jury to try our case?

METCALFE: I believe it is just as possible to get a fair, impartial jury here as it is possible in Morden, Brandon, or Minnedosa. I do not think that you will get a fairer one elsewhere.

Queen then quoted from an affidavit made by John L. McBride of St. James:

> That this feeling of hostility against the accused has been deepened and intensified during and since the trial of Robert B. Russell and I believe that such is caused by the reading of the newspaper publications of the trial of Robert B. Russell and the statements contained in the press concerning the appeal and my belief is based on over-hearing conversations, repeatedly, between persons living in that vicinity, remarking upon the newspaper publications.

Still, Justice Metcalfe remained unmoved.

Having achieved little progress on the first matter, Queen turned his attention to the second issue, concerning jury tampering. He read his affidavit in support of the second part of his motion:

> That I am informed and verily believe that members of the Royal Northwest Mounted Police and others have been active in making enquiries regarding and approaching numbers of prospective jurymen regarding their opinions in this case and the attitude they would probably assume were they selected to form part of the jury by which it is proposed that I should be tried.

Similarly, Queen read the affidavit of Joseph Wright who had been served with a summons to appear on the jury panel:

> That on the day following the service of the above summons upon me, I was called on by a tall man who stated he had several lots in West Kildonan to dispose of and discussed with me the best means of disposing of them. His interest in real estate was not very great for he shortly turned the conversation on to the subject of the trial of Robert B. Russell, which had recently taken place [...] and he asked me what was my candid opinion of the matter. I told him that the conclusion I had come to regarding the whole business was that the strike developed into a big general sympathetic strike.

Continuing his argument, Queen told the court that Wright had been called upon by an agent of the Crown:

QUEEN:	He was called on by an agent of — shall I say the Crown?
METCALFE:	If you like.
QUEEN:	Of the Crown — and asked his opinion as to the trial. This was not the only case.
METCALFE:	Someone is lying.
QUEEN:	It is not I, Your Lordship. We have other evidence that other jurymen have been approached. This is a very serious aspect.

Justice Metcalfe asked the name of the person visiting Wright, but Queen explained that no name was provided in the affidavit. Queen explained that the defence had received several names and addresses of people visiting jurymen, and they had learned that fictitious names and addresses had been given. Queen concluded, "I am unable to form any conclusion other than that it is the intention of the counsel for the Crown to choose [...] jurymen whose opinions and tendencies would tend towards an unfair conviction against me." All the defendants supported Queen's motion.

Bonnar added, "To think of getting a fair trial in Winnipeg is an absurdity. It would be a farce to hold the trial here. If the case is tried here, I have no more hope of justice than I have of becoming a millionaire."

In response, Andrews pointed out that Russell, after conviction, had said from the prisoner's dock that he had received a fair trial. The defendants scoffed at Andrews' peculiar interpretation of Russell's speech.

Despite the evidence, Justice Metcalfe refused the motion and accused the defendants of employing delay tactics:

> The other men need not fear an unfair trial. The Crown is making every effort to be fair. If the accused are trying to delay the trial in the hope that something will turn

> up, this is a very good way to go about it [...] I venture to say that more than six months after the incidents occurred, very few persons remember anything that was said in the *Citizen*. The things it said have passed entirely out of the minds of the jurors. I find it hard to justify a change of venue at this time. I therefore refuse the motion.

The trial would remain in Winnipeg.

The following morning, Bonnar advised the court that McMurray, offended by Justice Metcalfe's remark, refused to appear in court and would have nothing more to do with the trial. Bonnar told the court that he had just entered the case and, without McMurray's assistance, was in a very difficult position. Justice Metcalfe gave Bonnar a message for McMurray: "It is quite within the range of possibility that Mr. McMurray was mistaken. He may feel keenly, but if chooses to come back, I will let it go at that. I did not say Mr. McMurray was a liar, but that he may have been mistaken. I said I believed Mr. Pyniger." Bonnar then left the court to consult McMurray.

During his absence, His Lordship asked Armstrong whether he still wanted McMurray as counsel:

ARMSTRONG:	Yes, My Lord, I do.
METCALFE:	Well, if he is not here in a few minutes, we will see what we can do to get him back here.

This reply was the only statement made by George Armstrong, the soapbox orator with a reputation for profane language, throughout the entire trial.

After a moment, Bonnar returned to the courtroom and said that McMurray still refused to return. Justice Metcalfe was uncertain how to proceed: "I don't know what we can do about it. I don't know that a lawyer may throw up a retainer in that way. I've always been friendly with Mr. McMurray. I can't countenance a fit of anger. I repeat that I didn't mean to insinuate that he was a liar. But I also repeat that I believe Pyniger."

The judge ordered McMurray to return to court and sent a constable to retrieve him. The crowded courtroom waited again. When McMurray finally returned, Justice Metcalfe urged him to resume his responsibility to his client:

METCALFE:	Mr. McMurray, you are showing a neglect of the interests of your client. You should not let your personal feelings make you neglect your duty. You have had time enough to sulk. I tell you now that Armstrong must have counsel.

MCMURRAY: It is not a matter of sulking. I am through. I owe a duty to my client, but in interpreting your remarks, I felt they were an injustice to my client and myself. I felt if my words were not having any weight it were better that I should withdraw [...] I interpreted your remarks as an insult to my honour.

METCALFE: You should not have used the term 'unqualified denial.' You can't bring your own witness into the box and then call him a liar. Now, I have made it very easy for you to return to court, Mr. McMurray.

MCMURRAY: I will return then, Your Lordship, on the explanation that you did not attack my honour.

McMurray left the courtroom and returned a few minutes later.

McMurray was not alone in his frustration with the case. Bonnar told the court that the conditions surrounding the case made it very difficult for him to continue to defend the accused men: "My Lord, I am not a thief, and I cannot stay and take my client's money feeling that under the circumstances I can be of no further use, and I ask Your Lordship to permit me to withdraw." The defendants persuaded Bonnar to stay.

Regardless, Bonnar was acutely aware of the impending outcome. "Boys," he said, "there is no hope of a fair trial or an acquittal. The plank is greased for you to go into prison."

"Well, then," said Pritchard, "Let's put in some spikes. Maybe that will catch us by the britches."

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CHAPTER TWENTY

When the court convened on January 27, Andrews made a motion that the Crown, if necessary, be allowed to stand aside each of the two hundred fifty members of the jury panel on the grounds that the accused had refused to sever their challenges. The defence opposed the motion.

Bonnar argued that there was no foundation for the Crown's request, except that the Crown wished to be unfair and perhaps to "pack the jury." In addition, Pritchard said there had been a growing suspicion in his mind that the Crown was deliberately seeking to be unfair. He informed the court that