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

he was not alone in this opinion: "There are thousands of working men throughout the country who are of the same opinion. I feel that trial by jury [...] is not being followed in this case, but that it is a trial with a jury sitting by." Likewise, Ivens accused the Crown of a "desire to persecute us, rather than prosecute."

The defence suggested that, to be fair, the court should rule that the jury to try the case should be the first twelve names called. "We are willing to take a chance on this method," Ivens explained. In support, Queen asked the Crown to accept Ivens' "sporting offer, to disabuse the public mind of suspicions regarding selection of the jury."

Crown counsel scoffed at the idea. Pitblado characterised the defence's request as a bluff: "Defence counsel know it's impossible." Similarly, Andrews objected to sport being mixed with the jury selection and expressed his faith that the jury would deliver a fair trial. Ultimately, it was the judge's decision.

Judge Metcalfe declared, "No, I can't do it. A man cannot be tried except according to the law. In olden times they used to throw an accused man in the river. If he sank he was guilty. If innocent, he floated." Heaps shot back, "I think we'd stand more chance that way."

Bonnar continued to express his concerns regarding the jury and questioned the Crown's motives regarding the motion:

> My Lord, the proposed arrangement by the Crown permits the possibility of the jury being packed if they so desire. Why have 250 jurymen been summoned? Is it because of the feeling in the district? Why do Crown counsel desire the right to stand aside the whole 250? Is it because of feelings in favour of the accused that so large a panel has been obtained?

Upon hearing this, Andrews told the court that if the Crown did not have the right to stand aside each of the members of the jury panel, it might ask that the seven men be tried separately. Bonnar was disgusted. He criticised the Crown for constantly seeking advantages while extending none to the accused. Justice Metcalfe reserved his ruling until he could confer with some of the members of the Court of Appeal.

This was highly unusual. The defendants were entitled to receive Justice Metcalfe's ruling and had the right to argue their own appeal from his rulings in the Court of Appeal. By seeking the Court of Appeal's input, Justice Metcalfe was, in essence, removing the right of appeal.

Justice Metcalfe reported that the members of the Court of Appeal were unanimous in their opinion, and he ruled that the Crown could stand aside each one of the jurors if the Crown felt it was necessary. Justice Metcalfe also ruled that the accused would have four peremptory challenges each, giving a total of twenty-eight for all seven defendants.

The trial began with jury selection. The members of the panel were called from the courtroom and took their places in the jury box when called. The defendants were limited in their peremptory challenges, but they could still challenge any juror for cause. If they could show the juror to be unfit to sit, he would be disqualified.

The selection of the jury began with the defendants challenging each of the jurors for cause. When one of the jurors admitted that he had been approached and questioned after he was served with a summons for jury duty, the defence's hopes must have soared. It was a short-lived celebration. When the potential juror was asked to identify the man who questioned him, he explained that the inquirer had been sent by the accused. Defence counsel used a peremptory challenge to remove this juror from the box.

On January 28, the twelfth juror was sworn in. With the results of the RNWMP questionnaire in his possession and an unlimited number of stand asides available for his use, Andrews was able to obtain precisely the jurors he wanted. The twelve men were all farmers, well advanced in years, who resided in the countryside surrounding Winnipeg. With the jury box full, the indictment that had been read at the R.B. Russell trial was read again. Trial would commence the following morning.

In a taped interview five decades later, Justice Joseph T. Thorson, President of the Exchequer Court of Canada, expressed his continuing shock over these events:

> When I look back at the trial of the strike leaders of 1919, I am shocked at the fact that it is possible to pack a jury, strictly in accordance with the law, in such a way that there is no possibility of an acquittal for the accused, and I believe that this was the situation in the case of the trial of the strike leaders [...] A very large jury panel was called [...] and that prior to the actual trial, every person on that jury panel list was investigated [...] I did hear that the Mounted Police were used for the purpose. So that counsel for the Crown had a dossier about every single person on that list and that by the use of a process of standing by for the time being, or if a person were called, and the accused challenged that person and there was some doubt in the mind of the Crown whether that person would be for or against the accused, the procedure was 'grounds of challenge admitted', so he was out. I thought this was a shocking performance.

Justice Thorson had assisted Crown counsel Hugh Phillips, K.C. in presenting the Crown's case at Fred Dixon's trial. His reflection is troubling.

When Andrews rose to deliver the Crown's opening address to the jury, his words built into a crescendo of emotion as he described a city exposed to catastrophe, without bread, milk, or fire protection. The description was sensational. Bonnar was on his feet. "He'll have the jury in tears, soon," he said. Andrews begged the jurors not to be diverted by counsel for the defence, whom he characterised as the "cleverest criminal lawyer in Canada."

In his opening address, Andrews charged that some of the accused men were part of the "Red hand of the revolutionist" who had infiltrated the labour movement. When the defendants objected to statements made by Andrews, Justice Metcalfe advised the jury not to accept the statements as being any more true than the defence's objections.

Andrews moved on to read a portion of Ivens' speech at the Walker Theatre in which the minister said that the capitalists ruled Canada and the workers were their "dupes." Ivens jumped to his feet demanding that the whole speech be read: "We have nothing to fear if the whole truth is brought out, but I say that this kind of thing is not fair. If you want to be fair, read all of it." In response, Justice Metcalfe said that he would not listen to denials from the accused men who were defending themselves while they were not in the witness box. Again, he offered them the opportunity to obtain counsel, but all refused. "I warn you," said the judge, "I'll descend with a heavy hand upon anyone who interrupts this court with statements of fact or denials."

Before the first witness was called, Bonnar rose to request that the Crown provide more particulars on the charges. "What we want is: What is the seditious intent? When was it committed and where was it committed? We want the Crown to give us the particulars. The Crown is not aiding this case in any way." Andrews said that he could not provide any more particulars, and Justice Metcalfe made no order for the Crown to do so.

There was one more matter to deal with before the Crown began calling its witnesses. By practice, the defence counsel are seated at the table closest to the jury box and witness stand. In 1920, trial lawyers relied heavily on emotional appeal and considered it an advantage to be positioned close to the jury, whom they hoped to involve in the drama of their cause. In this trial, the Crown had arrived first in the courtroom and had secured this strategic table. The defence objected to this deviation from common practice.

Andrews, a devotee of the histrionic art, maintained that the Crown should be allowed to remain where it was seated. After brief argument, Justice Metcalfe ordered that the lawyers change places. Lawyers busily began moving loads of books and exhibits from one table to another. Wagons of documents were pushed from place to place. His Lordship directed the activities from the bench while the men scrambled into place.

Finally, the trial was underway. The evidence was substantially similar to that admitted at Russell's trial. The Crown was still trying to prove the existence of a nation-wide conspiracy in Canada in the years 1917, 1918, and 1919. The same witnesses were called and the same exhibits entered. Justice Metcalfe gave the same rulings on the admissibility of evidence as he had done in the Russell trial. The defendants were unable to bring evidence

showing the role of the Citizens' Committee of One Thousand, the defendants' efforts to settle the strike, or the subject of collective bargaining.

The defence team was composed of three lawyers and four unrepresented men. As entitled, they each raised several objections to the Crown evidence, and the constant interruptions produced a great deal of tension, particularly between the Crown and the defence. The feelings of animosity were felt and fuelled by the gallery crowd. The atmosphere around the courthouse was described in a letter Supt. A.W. Duffus wrote on January 30 to the Commissioner of the RNWMP in Regina:

> It is imperative that I should have seven more Constables [...] at the earliest possible moment [...] I would ask that these men be of good physique and in possession of plain clothes. I might say that a very uneasy feeling pervades amongst the Counsel for the Crown and also the judges, (Metcalfe and Galt) who are trying the seditious conspiracy and seditious libel cases [...] It is desired that we have men in plain clothes mingle amongst the crowd attending these trials, in order that we be prepared for any trouble that might occur as the trials proceed.

As the trial progressed, it was apparent that Bonnar was a real asset to all of the accused. He assumed the role of lead counsel, and the others adopted both the substance and style of his presentation. Bonnar would not be bullied by the Crown or the judge, and he made every effort to ensure that the accused could present their full defence.

Bonnar recognised that the intensity and pace of the trial was a detriment to the defence. Therefore, he asked the court to cut off the night sessions. The burden of the cross-examination fell on his shoulders and, due to a lack of time to prepare, he could not represent his client to the best of his ability. Unmoved, Justice Metcalfe ordered the night sessions to continue. Dixon wrote to his nephew on February 1 and, in the letter, acknowledge the trial's pace and atmosphere:

> It is quite encouraging to note how everyone watches Bonnar to see what he will do next. The four undefended men are giving a good account of themselves and provided a new interest. Naturally the courtroom is crowded all the time. Bonnar asserts that the trial will last two months. Metcalfe is determined to push on. He ordered a night session on Friday against Bonnar's protest. Very well, My Lord, says Bonnar, as he walked out not to return until next morning looking hale and hearty after a good night's sleep.

As the trial dragged, the toll of the experience began to show on the defendants' faces. Roger Bray's response was to take frequent naps in his chair during the trial. Bray's propensity for sleep was well known to the other accused men. In fact, Bill Pritchard recalled that when they were all taken back to jail after the preliminary hearing, the first thing Bray did was to curl up on a cot in his cell and go to sleep while the others anxiously discussed the

day's events. Bray seemed to think that his presence was all that was expected of him during the court proceedings. Because Bonnar represented him, unlike the unrepresented men, he could afford to let his attention wane.

It is unlikely that Bray slept during the proceedings in court on February 3 when Andrews introduced some highly prejudicial evidence. He called Constable Harvey Blair of the RNWMP to the stand. Blair testified that just two days earlier he had attended a meeting at the Icelandic Hall at which Roger Bray was a speaker. Blair provided his account of the event:

> In the opening of his address Bray invited any agents of the government who might be present to take a seat on the platform so that they might not make any errors in taking notes of what he said. He said that a man who would do such a thing was lower down than a rattlesnake, and that a skunk was a higher member of [...] society. He said that men who [...] do such a thing if in their proper uniform would be wearing a bright red tunic and the most significant part of their uniforms would be the yellow stripe on the pants.

The fresh testimony came as a surprise. Unfortunately, Bonnar was not even in the courtroom to hear the evidence. Instead, Ward Hollands provided the cross-examination:

HOLLANDS:	How did you happen to attend the meeting?
BLAIR:	On orders from my officer commanding.
HOLLANDS:	To give evidence in this trial?
BLAIR:	To make a report.

Hollands argued that this evidence could not possibly have anything to do with the conspiracy charge. Rather, he excused Bray's comments as being a reaction to the evidence given by a RNWMP spy on the previous Saturday. He contended that the Crown was feeling the effects of the ongoing public criticism of the prosecution, and was striking back. However, Justice Metcalfe took the matter very seriously:

ANDREWS:	Defence in this trial has been treated with unusual courtesy. Some action should be taken to show the disapproval of this court.
METCALFE:	This is a very serious matter, it not only affects the terrorising of witnesses but also attacks the King's uniform as worn by the Mounted Police. I direct that a copy of this evidence be sent personally to the

Attorney-General so that he may deal with it as he sees fit. It is a matter for the grand jury.

ANDREWS: I would ask that Bray be taken into close custody during the balance of the trial.

METCALFE: He'd better surrender to the keeper of the common jail and stay there. He'll be taken to jail.

That evening Bray ate his supper in the provincial jail and attended the night session in the custody of a warden.

During the evening session, Andrews turned his attack on Bill Ivens. He called Constable M.V. Manly, a former newspaper reporter, to describe the sermon that Ivens had delivered on December 28, 1919 at the Labour Church immediately after Russell had been sentenced. Manly's testimony was damaging:

> Ivens said that Russell had been tried by a poisoned jury, before a poisoned judge and given a poisoned sentence. He said, Tommy Metcalfe had said in his charge to the Russell jury that general strikes were illegal. He had said they were illegal and he had no law to prove his statements [...] Such men as we are being tried, not for love of freedom, but for hatred of liberty!

Manly also quoted Ivens as saying the charge of seditious conspiracy was a "farce and travesty of justice." Ivens tried to have the controversial evidence removed, but he would not be successful:

MCMURRAY: The Crown said in bringing this witness that it intended to show intent and now it is trying to prove contempt.

ANDREWS: Intent and contempt.

IVENS: First, I move this evidence be stricken from the record.

METCALFE: It will not be stricken.

After calling another RNWMP officer to corroborate Manly's evidence, Andrews made a motion that Ivens be returned to prison:

ANDREWS: I consider it my duty as Crown counsel to ask that in order that there shall be no more of this that Ivens' bail bond be cancelled.

METCALFE: Bray's statements are directed against the King's uniform and witnesses in this trial. This is more of a personal attack on myself. I can understand how an explanation of 'poisoned jury' might be made, but 'poisoned judge' and 'poisoned sentence' are capable of no explanation, and so, while I have exercised great patience insofar as I am concerned with the accused in this trial, I think it better that the matter should be put before the full court of King's Bench and before the Attorney-General to be presented to the grand jury. Many thoughtless persons might think the judge was seeking vengeance for something done to him personally if I acted. It should be referred to someone else in authority to deal with. It is the court and its administration which I must protect.

The Attorney-General's department moved into action. On February 10, Deputy Attorney-General Allen appeared before three judges of the Court of King's Bench. Allen's motion was simple. He asked for an order calling on Ivens to show cause why he should not be committed to jail for contempt of court. His argument was simple, "It seems to me that when a thing is so clear — 'a poisoned judge, a poisoned jury, and a poisoned sentence' — only one explanation can be given." The full court granted Allen's motion. But there was a problem. "We cannot summon him [Ivens] to appear before us while being tried on some other charge elsewhere, because he cannot be in two places at the same time," said Chief Justice Mathers. But Allen had already spoken to Justice Metcalfe, who agreed to adjourn the hearing of the trial of the strike leaders until the contempt proceedings against Ivens were finished.

The contempt proceedings were scheduled to begin on February 18, 1920. On the appointed day, Ivens appeared in Courtroom No. 3. The room was filled to capacity. There was a galaxy of lawyers among the spectators. The seriousness of the case was evident when three judges — Chief Justice Mathers, Justice Prendergast, and Justice Galt — solemnly entered the courtroom.

Ivens conducted his own defence and stood to read two affidavits. The first, made by him, contained large extracts from the speech that had given rise to the contempt charge:

> The idea of a conspiracy has never entered my mind. Though I am not guilty of seditious conspiracy, there seems to be little hope that I shall escape a prison sentence. The vitriolic attack of the daily press had deliberately poisoned the mind of the public. Bob Russell was tried by a poisoned jury, by a poisoned judge, and he is in jail tonight because of a poisoned sentence. When Judge Metcalfe refused to let us into the court, while Russell was on trial, he ought not to have continually been

> rapping at us. He referred to us all by name — the way he rolled the words 'Preacher Ivens' under his tongue as if it were a poisoned morsel. If Tommy Metcalfe says we acted unlawfully during the strike, he said so unlawfully. I said that today we in Canada are in the midst of a campaign of persecution and oppression. I said I had done my duty as I saw it and if I must go to jail, I would do so. I said that Labour had only four representatives in the Dominion and Provincial Parliaments. The laws were made by the lawyers, rather than in the interests of the workers. I said the workers would have to wake up and send their own men to Parliament.

The accused men had taken pride in their ability to maintain their composure and humour throughout the trials. They were determined not to beg for mercy or sympathy. Despite everything he faced, Bill Ivens reacted with dignity and strength, but this day would prove most challenging.

Clearly, the events were beginning to break his spirit. By nature, he was an emotional man with strong convictions. During the proceedings, every word he used to defend himself was intensely scrutinised. The scene in court must have been exceedingly painful and frustrating. It appeared on numerous occasions that he would break down, but after pausing to take a drink of water, Ivens was able to continue.

Ivens' second affidavit was from Principal Barty of St. James. Barty had heard Ivens' speech and said that it did not impress him as intended to be in contempt of court. Rather, he explained that Ivens was referring to the extent to which the press attacked the accused men, making it difficult for them to receive a fair trial: "Suppose the other side had held public meetings and stated Russell had not been sentenced severely enough? Then we would have trial by public meeting, not by courts. If Ivens has a complaint against any newspapers, there is a remedy at hand if he wishes to use it."

Ivens could no longer contain his emotions. Tears streamed down his face and, to the embarrassment of his co-defendants, his voice was so choked with emotion that he could hardly speak. Seemingly defeated, he offered an emotional apology to the court:

> I spoke entirely without malice toward the Honourable Court, with no desired wish or intent of being in contempt. If, however, the court should be of the opinion that I placed myself in contempt, then I say I sincerely regret having made this statement and I respectfully request that this court accept my apology therefore.

It was a low moment for Bill Ivens. Chief Justice Mathers announced that judgement would be reserved until next Tuesday morning.

The three judges were in agreement. Ivens was indeed guilty of contempt of court. Chief Justice Mathers said that there could be no doubt in the minds of anyone who heard Ivens' address that he was in contempt of court for creating the impression that Russell had been dealt with unjustly and that Justice Metcalfe was an unfair judge:

> Ivens referred to press comment on the Russell trial. If he had any complaint to make the courts were open to him. In the past newspapers have received too much freedom in commenting on cases before the courts. I trust they will be more careful [...] I have read the editorial to which he refers and I must say it contains much that the accused men had a right to complain of, and had Ivens contented himself with protesting against this article, he probably would not have been visited with the consequences of contempt of court for so doing [...] The fact remains that his words were calculated to create in the minds of those who heard them the impression that Russell had been unjustly and unfairly dealt with by the judge and jury who tried him. The tendency of such a speech could only be to shake the confidence of the public in the fair and impartial administration of justice through the courts.

But Ivens' tearful apology had had some effect. Mathers admitted that if Ivens had not taken such a submissive attitude, "It would have been our painful duty to have administered a somewhat severe punishment." The lesser punishment required Ivens to post a one-thousand-dollar bond to ensure his good behaviour in court during the next three months, and he would be imprisoned until the bail bonds were signed. A chastened man, Ivens returned to courtroom No. 1. The Attorney-General was satisfied with the decision against Ivens and decided that Roger Bray would not be summoned to face further charges. Likewise, Bray was released on bail.

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CHAPTER TWENTY-ONE

The trial of the strike leaders resumed, and a mountain of documents was entered as evidence. The defendants were openly upset. How was all this evidence connected with them? If the Strike Committee was responsible for all articles published in the *Strike Bulletin*, why had they been selected for prosecution?

The questions were reasonable, but Andrews gave a confident response to the defence's flurry of protests:

> We have shown that Heaps was a delegate from the Upholsterers Union to the Strike Committee and that he was a delegate to the Trades and Labour Council and took part in its deliberations. We have produced a mass of evidence connecting R.E. Bray with the Strike Committee, including a certificate from the committee that he was authorised as one of its speakers. We have proved that William Ivens was editor of the *Western Labor News* and made public speeches, we have —

Before Andrews could finish, the accused men interrupted. They insisted that they were being railroaded into prison. The judge attempted to reassure them: