> 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:

> Our courts don't send men to jail unless the accused have a guilty intent in their minds. We don't send men to jail because they technically violate laws without any intention of doing so. If you men show there was no guilty intention behind your acts you will be freed. I don't know of a better method of determining an alleged guilty intention than to let a jury decide it.

When Bonnar expressed concern that the main issue would be lost in the labyrinth of material, Justice Metcalfe continued to defend the court:

> Afterall, the Crown has got to prove a guilty mind to prove its case. I have dealt at more length with this question than I probably should at this time, but I wanted to calm the fears of the men who seemed to think they might be railroaded into a false position [...] a jury of common-sense men know whether everyone had a guilty intent or not. I don't think there would be any better jury than a farmer jury to judge the innocence or guilt of a man's intent. They spend practically all their days with nature, and the general desire of the man who lives with nature is to do good. They can tell whether a man had guilty or innocent intent, and any who had innocent intent need not fear.

It is doubtful that the judge's statements did much to assuage the defendants' fears.

On February 24, Bonnar announced that the defence did not intend to call witnesses. This showed the jury that the defence did not wish to drag out the case. After the Crown's evidence and the addresses, the members of the jury would deliberate and be free to go home.

By declining to call witnesses, the defence is allowed to give the final address to the jury. Defence counsel asked if they could enter documents into evidence and still maintain their right to the final address, but Justice Metcalfe did not provide a straight answer. "I'll jump that stile when I come to it," he said.

As the Crown neared the close of its case, Andrews continued to place mass amounts of documents into evidence. Bonnar objected, accusing the Crown of unnecessarily prolonging the case. Justice Metcalfe issued a stern response:

METCALFE:	Gentlemen of the jury, this is perhaps one of the most important cases that you have ever sat upon as a jury or that I have sat upon as a judge. It is a case that requires a great deal of time and endurance. It is a case in which Mr. Bonnar will have all the time necessary. I am getting sick and tired of hearing reference to time and fairness. Go on.
BONNAR:	So am I, getting sick and tired.

Bonnar's apparent fatigue was unfortunate, particularly if it influenced his decision not to present his case in full. The defence could have called witnesses, brought exhibits to court, and read some of the false reports and exaggerations published in *The Winnipeg Citizen*. Instead, it is likely that the defendants and their counsel were worn down from long hours in court. The defence would proceed with closing arguments. It was an unwise decision.

In the closing hours of the Crown's case, there was a new development. When court opened on the morning of March 2, a new lawyer stood in the ranks of the defence counsel. W.H. Trueman, K.C. rose and told the court that he was appearing on behalf of defendants Heaps and Queen. Trueman's eleventh hour entry into the case was dramatic and unexpected.

Trueman was already well known to Justice Metcalfe. After the Russell trial, the Winnipeg Trades and Labour Council hired Trueman to study Justice Metcalfe's charge to the jury and to give his opinion on the legality of a general sympathetic strike. At a labour convention, Trueman provided a report of his findings. He told the audience that, although he regretted disagreeing with Justice Metcalfe's interpretation of the law, the sympathetic strikes had a lawful purpose and did not employ unlawful means. He declared that Justice Metcalfe had failed to advise the jury of the strike's legitimate purposes and had laid emphasis on the Crown's contention that the strike had a revolutionary aim. The legal opinion was so well received by the Winnipeg Trades and Labour Council that they had it printed as a little booklet to be sold throughout the city. Because the case was still pending in the courts, Trueman had to be very careful of how he stated his criticism of Justice Metcalfe's charge to the jury.

Trueman, and his published legal opinion, generated a lot of controversy in the city. His neighbours on Wellington Crescent were very critical of the support he was lending to the defence. It was likely that Justice Metcalfe had read the pamphlet himself or, at minimum, had heard about it. Typically, a judge does not question a lawyer's right to represent a client, but when Trueman announced he would be representing Queen and Heaps, Justice Metcalfe said he would consider Mr. Trueman's application. "I will reserve that matter. It will be noted, however, that you have so stated," said the judge.

On March 2, Andrews advised the court that the Crown was finished calling its witnesses, but would enter a few more documents into evidence. When the Crown's case was finally closed, 135 witnesses had been called, the affidavit evidence of 5 witnesses had been read, and 1,001 exhibits had been filed.

At the close of the Crown's case, Bonnar made a motion to have Bray, Heaps, and Queen discharged on a directed acquittal. This motion is based on the principle that, due to a lack of evidence, the defendants cannot be

legally convicted of the offence charged. In such a case, it is only proper that the trial judge direct the jury to acquit, rather than leave the case with the jury for decision. Bonnar argued, "I submit there is not a tittle of evidence from which the jury can adduce that there was a seditious intention in their minds. Neither is there evidence to show that there was any agreement to carry out a seditious intention. There is a complete dearth of evidence specifically connecting the accused up."

Providing a more specific example, Bonnar argued that the only evidence against Bray was that he marched with a soldiers' parade to the legislative buildings and interviewed the premier to get collective bargaining. The Crown had brought no evidence against Bray for any activity prior to the strike. Justice Metcalfe disagreed. He explained that, in his opinion, the strike was certainly seditious and if Bray went after collective bargaining, then he adopted the strike. The two men debated the matter:

BONNAR:	But never before have we had strikes called 'unlawful'.
METCALFE:	Yes, and never before have we had a strike such as this. That's in the evidence [...] If Mr. Heaps can satisfy the jury that he didn't believe the strike was unlawful, and was honestly doing his duty, then he will get an acquittal. But he must convince and satisfy the jury.

Likewise, McMurray asked that a direct acquittal be ordered for Armstrong, Pritchard, and Ivens. On behalf of Johns, Ward Hollands joined in the general motion and particularly stressed that count seven of the indictment, charging common nuisance, should be withdrawn from the jury because the evidence showed that Johns was not even in Winnipeg during the strike.

Andrews argued that there was enough evidence against each defendant to let the case go to the jury. Referring to Bray, Andrews said that parades had been organised by him and spread terror into the people of the city: "In an interview with Premier Norris, Bray, at the head of a large body of men, said he was a Bolshevik and proud of it ... The Crown contends that in itself was seditious." In addition, Andrews referred to some of Bray's speeches, particularly his verbal attack of the RNWMP: "The evidence shows Bray was using every means in his power to carry on a seditious conspiracy."

Next, Andrews turned his attention to Johns:

> He was a member of the Trades and Labour Council and a delegate to the Trades Congress at Quebec. It is significant that six of the radical resolutions defeated by the Congress originated in the Machinists' Union, for which Johns was business agent.

> He spoke at the Majestic Theatre meeting where radical literature was sold and distributed. He and Russell tried to gain control of the Labour Council for the 'Reds.' He went to the Calgary conference and was a member of the central executive of the One Big Union. He went east and carried on his propaganda.

Speaking of Pritchard, Andrews pointed out that the defendant was a member of the Socialist Party of Canada in Vancouver and had been the Secretary of the Dominion executive. In addition, he made several speeches in Winnipeg as the party's top-notch speaker and also attended the Calgary conference.

Andrews made a similar effort to implicate Armstrong. He explained that Armstrong was a member of the Trades and Labour Council, who took a very active part in the strike in Winnipeg. Furthermore, he was a member of the Socialist Party of Canada and had been a speaker at the Walker and Majestic Theatre meetings.

Andrews also provided a description of Queen's role in the alleged conspiracy:

> He was advertising manager for the *Western Labor News* during the period with which we are concerned. He presided at the Walker Theatre meeting, which was advertised as a 'protest against autocracy.' He presided at the 'sit down' meeting of the Food Committee at the City Hall early in the strike. Then we have his speeches during the strike and his activities in the City Council itself. We do not find Queen chairman of the second City Council Food Committee when it was decided to supply bread and milk to the citizens. He was at least consistent.

Heaps was described in a similar manner. "[Heaps] was a delegate to the Trades and Labour Council. We have the evidence of witnesses that he was one of the radical members of that body, and that he supported the move to put Blumenberg on the council, although he was not a union man," Andrews told the court. Pitblado pointed out that Heaps had voted against increasing the water pressure to normal during the strike, and he had voted against ordering civic employees back to work. "In view of his proved connection, the Crown contends that Heaps would be liable for seditious conspiracy," said Pitblado.

Pitblado then turned his attention to Ivens, reminding the court that the defendant was editor of the *Western Labor News* and the *Strike Bulletin*. Ivens' speeches were reviewed in detail and particular emphasis was placed on remarks that accused the capitalists of controlling the judiciary, military, and legislature.

When the Crown concluded its argument, Justice Metcalfe ruled that there would be no direct acquittals. Instead, there was enough evidence against each of the accused to let the case go to the jury as charged.

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