

IN THE TERRITORIAL COURT  
OF THE NORTHWEST TERRITORIES

IN THE MATTER BETWEEN:

HER MAJESTY THE QUEEN

Complainant

- and -

D. WHITFORD

Defendent

Reasons for Judgment of the  
Honourable Mr. Justice W.G. Morrow,  
given at Yellowknife, N.W.T., on  
the 21st day of February AD 1969

1 ~~The Court:~~ This is not criticism of the Crown Attorney. The  
2 Crown Attorney has done his job quite properly, and I  
3 think ~~they~~ <sup>he has</sup> have a moral responsibility. Perhaps I am  
4 old-fashioned in this year 1969, but I think there is such  
5 a thing as fairness, and I don't think it was fair to send  
6 the man home with a view to arresting him the next day.

7 *Crown counsel.* Mr. Troy: Well, My Lord, I submit it was also not fair of the  
8 a accused.

9 The Court: You don't have to say that, I am with you there.

10 *Crown counsel.* Mr. Troy: Yes.

11 The Court: The accused was wrong in not showing up on time,  
12 but when he did show up he attempted to correct it, that's  
13 what I am saying. At that point, the harshness should have  
14 been cut out. It's <sup>so</sup> this harshness that was unfortunate.

15 *Crown counsel.* Mr. Troy: Well, My Lord, it was not the Police who did this,  
16 ~~It~~ was on my instructions.

17 ~~The Court:~~ You don't have to defend the Police, Mr. Troy.

18 There is nothing wrong in what they did. You didn't even  
19 know that this man turned up, so don't try to defend the  
20 Police.

21 *Crown counsel.* Mr. Troy: My Lord, my point is this.

22 ~~The Court:~~ The Police are wonderful people, but I think they  
23 could have been easier here.

24 *Crown counsel.* Mr. Troy: My Lord, ~~the~~ <sup>have</sup> point is this. There has been a great  
25 deal of this non-appearance in court, and this is one of  
26 the first cases which I brought before the Court, and I  
27 would like some guidance in what the Crown should do; how

1 the Crown should proceed in future. It makes a mockery of  
2 the whole system of justice.

3 The Court; Mr. Troy, you are missing the point. This man de-  
4 faulted, and he has been punished. He came before the  
5 Magistrate, ~~he~~ pleaded guilty, and he has been presumably  
6 punished by the Magistrate, and he should have been punished,  
7 ~~and~~ if these people come before me they will be punished,  
8 and the proper thing is what you have done, ~~and~~ It's quite  
9 proper to come and ask for forfeiture of the bond, and I  
10 think you should, and if I may speak in general terms, not  
11 just directed to this particular case, ~~but~~ certainly since  
12 I have been a Judge, (and I am following the tradition that  
13 was set by Mr. Justice Sissons in the Northwest Territories),  
14 ~~and~~ I like to think we can trust people such as Mr. Whitford  
15 to be ~~let out~~ <sup>released</sup> on bail on their own recognizance, because we  
16 realize that a lot of these people do not have enough money  
17 to permit them to put up money. (~~Now~~ <sup>It happens</sup> in this case this  
18 man had friends who put up money.) Now ~~we~~ do that on the  
19 understanding, <sup>that</sup> and you as the Crown Attorney have gone along  
20 with the Court, and have been very cooperative and very  
21 helpful. All counsel have done that, and over the years  
22 we have had a real good rapport. I think that is the word,  
23 ~~and~~ most people have been <sup>released from custody</sup> out on bail pending trial. Now  
24 ~~Once~~ in a while they don't turn up. When they don't turn  
25 up, if there is no proper explanation for it, then they  
26 must be punished because they are abusing the system, or  
27 breaking faith with the Court and the Crown and with their

1 own counsel, (and <sup>while</sup> I hope it doesn't, but they are apt to be  
2 prejudicing their case with the Court), so, in these cases  
3 you are quite right, They should be brought up before the  
4 Court, and they should be punished. And when the authorities  
5 and the Court, the authorities such as yourself, have been  
6 put to expense and so on, that <sup>is</sup> the purpose of the one hundred  
7 dollars and fifty dollars and so on recognizance, and ~~you~~  
8 ~~are quite proper~~, it is quite proper to bring them up here,  
9 and I hope you will, and when I am criticizing <sup>copying</sup> the particular  
10 situation here, it is only because of the facts that have  
11 come up at this hearing, <sup>It has</sup> its turned out, unbeknown to you,  
12 Mr. Troy, (and you don't have to apologize because it's <sup>so</sup> not  
13 your fault; you did everything properly), but unbeknown to  
14 you, this man did turn up two hours late, and at that point  
15 I think that sensible people would have said to him, "Do  
16 you realize that charges are about to be laid?" I think  
17 reasonable people would have <sup>tel</sup> phoned the Crown Attorney under  
18 those circumstances, and I think reasonable people would  
19 have let the Magistrate know, and that is why I say I  
20 don't think it is quite fair. I think the Police have a  
21 responsibility to be fair, and I know lots of times, (almost  
22 all of the time), they make a very strong effort to be fair.  
23 I think they are a wonderful Police force, and I am sorry  
24 this type of thing turns up once in a while, but probably  
25 it's just as well it did turn up so we can get the air cleared,  
26 and I am sure it won't happen again.

27 Now, to give my Judgment in this case. Mr. Whitford,

1 you realize you have put your friend here in a position  
2 where he has put fifty dollars at stake for you, ~~you realize~~  
3 that. *do you?*

4 *Accused.*  
Mr. Whitford: Yes.

5 ~~The Court:~~ Now ~~he~~ has no status here. Mr. Troy very fairly  
6 arranged for him to be notified, and he has been a good  
7 spokesman for you, possibly better than you deserve. Now  
8 *>I am going to* *In this case* *what circumstances?* forfeit twenty-five dollars in  
9 each case. There will be a direction that twenty-five  
10 dollars in each case be refunded to the person who put up  
11 the money. Does that complete the matter, Mr. Troy?

12 *Accused.*  
Mr. Troy: Yes, ~~My~~ Lord.

13 ~~(The matter concluded)~~

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15  
16 O.J.T. Troy, Esq., *for* appeared on behalf of the Crown .

17 Mr. Whitford appeared without counsel

18 *Accused in person.*

19  
20 W.G. Morrow

21 J.T.C.  
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