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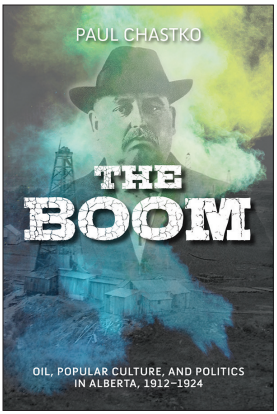

THE BOOM: OIL, POPULAR CULTURE, AND POLITICS IN ALBERTA, 1912–1

by Paul Chastko

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13

"It is to be Regretted that Such a Scoundrel Should Escape Punishment:" Buck's Appeals

> *The defendant is certainly not entitled to any sympathy. That he committed a gross criminal fraud was overwhelmingly proved. He fully deserved the term of imprisonment to which he was sentenced. But much as it is to be regretted that such a scoundrel should escape punishment, it is of vastly greater moment that the good faith of this country shall be scrupulously maintained and a strict observance of its treaty obligations insisted upon.*
>
> *For these reasons I would allow the appeal.*
>
> —Supreme Court Justice Francis Alexander Anglin
> *Rex v. Buck*[1]

Before Buck's trial ended, McGillivray knew exactly the grounds on which he intended to launch an appeal and did everything possible to have the case before the appellate court during its current seating. To facilitate transcription of evidence, McGillivray approached Short about omitting the evidence of ten witnesses to keep the appeal book as small as possible in exchange for a lengthier admission of facts. Short agreed, but insisted that James Hayes's affidavit remain in its entirety.[2] Ultimately the two sides reached an agreement that included the following stipulations:

- Buck served as managing director of Black Diamond Oil Fields in 1914

- Black Diamond Oil Fields owed $9,800 to International Supply Company on May 7, 1914
- George Buck furnished "a quantity of fluid, a mixture of oil and gasoline resembling crude oil" to pour into the Black Diamond Oil Fields' well
- The well produced no oil "outside of the oil thus put into the well"
- Buck instructed William Budge to send a coded message to Calgary meaning "oil is found."[3]

On November 28, 1916, four weeks after Winter's guilty verdict, Alexander McGillivray filed Buck's appeal to the Appellate Division of the Alberta Supreme Court. In all, McGillivray listed twenty-six grounds for the appeal and Judge Winter forwarded fifteen, including McGillivray's three core objections that the charges disclosed no offence known to the law in Canada, that the United States did not extradite Buck on the offences charged by the prosecution, and that fraud by a corporate director was not a crime under Canadian law. Judge Winter also wanted the appeal court to rule on his decision to amalgamate two separate charges into one; the legality of admitting Norman Fletcher's preliminary hearing testimony; and convicting Buck based on Cheely's May 9, 1916 article despite its exclusion from the case before Extradition Commissioner Paul J. Wall in the United States.[4]

Starting on December 12, 1916, the four judges on the appellate court—Chief Justice Horace Harvey, Justice Charles A. Stewart, Justice Nicholas D. Beck, and Justice Maitland S. McCarthy—heard Buck's appeal. McGillivray believed he had a strong case and condensed the appeal down to three essential points. First, McGillivray argued that Crown Prosecutor Short failed to establish a connection between Buck's statements to *Albertan* reporter Bill Cheely's 1914 article and the subsequent rise in the price of Black Diamond shares. Furthermore, the prosecution did not try Buck for the same offence that prompted his extradition from the United States. Staying with that same point, McGillivray wondered how the United States could extradite Buck on one charge, but Judge Winter combined them into two. This, he argued, directly contravened the terms of the Anglo-American extradition treaty.[5]

The hearing for Buck's appeal took about a day and a half to complete, wrapping up on the afternoon of December 13. At the end of the hearing, Crown Prosecutor James Short gloomily wrote Browning that, by the end of the first day of the hearing, he believed the court would overturn the

conviction. Short based this conclusion on the fact that Paul J. Wall did not read Cheely's May 9, 1914, article at the extradition hearing. Short reported that the justices "intimated that they thought under the circumstances the charge as to concurring with W.W. Cheely having been thoroughly proved they should order a new trial." By the morning of December 13, however, the court "seemed to take the ground that there was more evidence of concurring with W.W. Cheely than there was with W. Tryon." Short wrapped up his letter to Browning claiming he could not predict which way it would land. "It looks as though there might be a division of the court." To A.E. Popple, Short proved even more pessimistic, stating that the justices would order a new trial "on the grounds that the chief evidence which convicted him here was not before the Extradition Court in the States." If that happened, Short doubted the province could detain Buck on another charge, and the oil promoter would, once again, be in the wind. This latter observation prompted a concerned memo from Popple to Charles Cross regarding the prospect of Buck's appeal being sustained.[6]

Short's nightmare scenario did not come to pass. Instead, the Appellate Division upheld Buck's conviction ten days later in a split decision—two concurring with the trial verdict and two opposed. Short's old law partner, Justice Stuart, penned the dissenting opinion with Justice Maitland S. McCarthy concurring. Stuart found McGillivray's argument that Buck was "not extradited for the offence of which he was convicted" compelling. In every instance when the province pressed charges against Buck—from the original charge before Police Magistrate Davidson back in 1915 to the hearings before the extradition commissioner, Paul J. Wall, right up to the Crown formally laying charges in front of Judge Winter in September 1916—no prosecutor even cited Cheely's May 9, 1914, article. Yet Short wanted the appellate court to believe Cheely's article nonetheless contributed to Buck's extradition. "For my part," wrote Stuart, "I cannot believe it." In fact, Stuart pointed to Short's affidavit on October 4, 1916, requesting the appointment of a special commission to gather Cheely's testimony "a few weeks before the trial and long after the extradition" as being when the prosecutor first learned of Cheely's article. Furthermore, Stuart found the charge laid before Judge Winter too vague, alleging that "on or about the 1st day of May 1914 the accused . . . concurred in the publication of a false statement." As Stuart pointed out, the charge did not specify any statement and the accused had a right to know what statement brought the charge. "It was a general and therefore a defective charge and I think the consequence is that it was not a charge with respect to the Cheely statement." Stuart interpreted the word "offence" contained in Article III of

the Anglo-US Extradition Treaty to mean "the particular offence and not the general kind of offence." He then pointed to the trial transcript, where the prosecutor admitted that "if an accused has been extradited for the murder of A he cannot be tried after extradition for the murder of B committed before the extradition." Summing up his ruling, Stuart concluded, "There was not sufficient evidence in my opinion to support any other charge than that for which he was convicted." For good measure, Stuart added that the "statement" required to fulfill Section 414 of the Criminal Code "means necessarily a written statement" rather than an interview published in the paper.[7]

Justice Beck's opinion, with Chief Justice Harvey concurring, upheld the conviction. Beck wrote that the court found Buck guilty because of Cheely's testimony regarding the visit to the Black Diamond well on May 8, 1914, where Buck "made statements which were false, intending and expecting that Cheely would publish them in the *Albertan*." Regarding the two charges, Justice Beck wrote, "There is no difference between them except the statement of the place; one at Calgary and one at or near Calgary." For Beck, this amounted to a distinction without a difference, as "the facts justify a conviction under both or either or the charges." Beck then dismissed McGillivray's grounds for the appeal and turned his attention to Justice Stuart's opinion that the extradition treaty required the enumeration of a specific offence. Justice Beck argued that Buck was aware of the charges against him. After all, at Buck's arraignment on November 10, 1915, James Short devoted most of his time and attention to the conspiracy charges. However, Buck's illegal act (fleeing Canada for the United States) negated these two charges because they were not part of any Canada-USA treaty. Justice Beck wondered why, on July 3, 1916, US Secretary of State Robert Lansing signed an instrument of surrender directing Buck's extradition so that he could "be tried for the crime of which he is so accused." Beck took issue with Justice Stuart's opinion that the extradition treaty required the enumeration of a specific offence. Beck disagreed. The warrant of the extradition magistrate "may describe the offence in the generic words of the Extradition Treaty." While the accused "is entitled when brought before the Extradition Magistrate to have the offence particularized so as to fairly apprise him of the particular offence with which he is charged and to enable the magistrate to judge whether or not it is in truth an offence covered by the treaty," the trial court, argued Beck, "has nothing to do with this." While McGillivray argued this point "with a great sense of personal conviction," in practical terms "the evidence before the Extradition Magistrate was that taken by the Police magistrate at Calgary." While Justice Winter dismissed Tryon's evidence in rendering a verdict, McGillivray, argued Beck,

asked too much of the court by seeking to overturn the conviction because the statements given to Tryon by Buck "turned out to be unobjectionable." Furthermore, Beck disagreed with McGillivray's claim that the Tryon article provided the sole grounds for Buck's extradition, arguing that the cumulative evidence presented accomplished the feat. To prove his point, Beck pointed out that Fletcher's testimony placed before the extradition commissioner contained this exchange between Fletcher and Tweedie on cross-examination:

> Q: Was there a strike of oil there?
>
> A: According to the *Albertan*.
>
> Q: *The Albertan* is a pretty reliable journal?
>
> A: They are when they get reliable information.
>
> Q: Were you present when the *Albertan* ever got any information?
>
> A: No sir.
>
> Q: You don't know anything about it?
>
> A: I know Mr. Buck told me he put (it?) over them—that is all I know—and could not over the *News-Telegram*.
>
> Q: When did Mr. Buck tell you that?
>
> A: In Medicine Hat, on the 12th day of May.
>
> Q: And where were you when he told you?
>
> A: I don't know which street.
>
> Q: What day was the big strike?
>
> A: The 7th of May was the supposed strike.

Beck then quoted from Fletcher's direct testimony about the conversation on May 12, 1914 with Buck:

> A: [Buck] said Tryon of the *News Telegram* was taken out [to the well] but they did not take the matter seriously and they had to get *The*

Albertan and he had got a good write up from them, but they had not obtained the monetary results they expected.

Q: From the talking?

A: From putting the oil in.

Because Fletcher specifically cited Cheely's May 9, 1914, article, Beck suggested that "there is the highest probability that it was on all events, in fact, at least in part upon the evidence relating to the Cheely article that the surrender was directed." Thus, "the prisoner could properly be convicted on evidence relating to that article, as in fact was what happened, without contravention of Section 32 of the Extradition Act." As for McGillivray's contention that Cheely's article did not go before either the police magistrate or the extradition magistrate, Beck dismissed it as "a matter of no consequence." According to the Criminal Code, section 690, there is a difference between the amount and completeness of evidence "sufficient to put the accused on his trial and that which is sufficient to justify conviction." Beck concluded that, clearly, Buck "induced Cheely to publish material. In the *Albertan* with the intent alleged. Surely that was sufficient on a preliminary inquiry, though upon a trial, it would be improper not to insist upon more particularity."[8]

As *The Calgary Daily Herald* noted, the split decision meant "it is very probable that the appeal will now be carried to the Supreme Court of Canada," making it, potentially, the first criminal appeal from Calgary before the court. On January 4, 1917, notice arrived from McGillivray of Buck's appeal to the Supreme Court. The chances of a successful appeal were slim. Under the Chief Justiceship of Sir Charles Fitzpatrick, between his appointment on June 4, 1906, and October 21, 1918, when he resigned to become the Lieutenant- Governor of Quebec, an average of 68.2 percent of appeals heard by the court failed.[9] Despite James Short's evident interest in representing the province (he had previously appeared before the Supreme Court in 1914), the attorney general's office looked to retain legal counsel closer to Ottawa. Hearings regarding a second case from Calgary might appear during the same session and the department believed it could save money by hiring a single attorney to handle both.

In the meantime, the pressure of the case and the appeals took a toll on Browning, who increasingly regarded developments in the Buck case personally. The deputy attorney general's frustration soon fixed on how long the court took to schedule the date of the proposed hearing, bringing forth two grumpy messages to Short on the subject. On January 31, 1917, Browning

lashed out, urging Short to recoup some department expenses by going after the property of those who posted bail bonds for Buck. "Buck is putting us to all the trouble possible and I do not know of any reason why his bondsmen should be given further consideration," wrote Browning. The next day, Browning fired off a terse, single-sentence letter to McGillivray. "I would appreciate your advising me as to the probable date on which [the Buck case] will be heard at Ottawa, so that I may be in a position to decide as to counsel." Ignoring Browning's evident frustration, and the reality that McGillivray did not set the court's calendar, McGillivray responded that he suspected the case would not appear before February 19, 1917, but then again "it might very well come on at an earlier date." In any case, McGillivray requested the name of the province's solicitor in Ottawa in case matters arose requiring immediate communication with opposing counsel.[10]

McGillivray's question touched a sore spot in the attorney general's office because the department proved unable to reach Browning's desired counsel, Eugene Lafleur of Montreal. Little wonder. As both a practising lawyer and a professor of international law at McGill University, Lafleur established an illustrious career that included more than 300 appearances before the Supreme Court of Canada. Even prosecutor James Short seemed a little star struck at the potential of working with Lafleur, writing Browning that one of his law partners, George Ross, heard Lafleur argue a Crown case on a recent trip to Ottawa and said "he never heard anything finer in his life."[11] However, Lafleur's schedule would not permit taking on the Buck case. Instead, Browning retained the Ottawa firm of Lewis and Smellie to serve as Crown agents in the matter, with Robert C. Smith, KC, as counsel. To Smith, Browning confessed the province had spent a lot of time and energy in pursuit of the case, adding, "It is very important that conviction should be maintained."[12]

Until the mid-twentieth century, the Canadian Supreme Court remained "a modest affair" that only became the final court of appeal in 1949. In the words of legal historians James G. Snell and Frederick Vaughan, inconsistent support from the government and questionable partisan appointments ensured that the Fitzpatrick Court (1906–1918) would overcome neither its weak public reputation nor its partisan flavour. Indeed, as a political appointee himself, Charles Fitzpatrick stepped down as Wilfrid Laurier's justice minister in order to, for all intents, appoint himself chief justice. Although an experienced defence lawyer who acted as chief counsel for Louis Riel in 1885, Fitzpatrick is the only chief justice of the Supreme Court who never served on the bench prior to his appointment in 1906.[13]

Before the Supreme Court, McGillivray zeroed in on the Cheely article's importance to the prosecution's case. Indeed, the agreed statement of facts between the attorneys did not dispute that Buck served as director of the company, nor did it dispute that Buck conspired with others to salt the well, nor that "some people may have been influenced to buy shares" in Black Diamond because of Cheely's article in the *Albertan*. Nevertheless, McGillivray considered Buck's conviction "strange" because the prosecution failed to establish a basic connection between Buck and Cheely. Buck's trial presented no evidence that Buck "knew who Cheely was," nor did the prosecution establish that Buck invited Cheely "or anyone from the *Albertan* office to go to the well." For all Buck knew, "Cheely went as any ordinary passenger desiring a ride to the oil fields." Nor did the prosecution prove that Buck "knew why Cheely had come [to the well,]" or that he "asked Cheely to write one word." McGillivray claimed, "There is no evidence that the defendant knew that [Cheely] was making notes of what he saw or heard." Furthermore, McGillivray argued that no one could prove that Buck "either suggested that the article be written or that the defendant knew that any article was to be written." In fact, McGillivray pointed out that Cheely testified that he did not speak to Buck after publishing the article at all.[14]

McGillivray contended a discrepancy existed between the charge of "making, circulating or publishing a statement" known to be false and the grounds for Buck's conviction. Two key questions stood out for the defence attorney: What statement did Buck make that broke the law and where was it published? In delivering his verdict, Judge Winter answered both questions by pointing to Cheely's May 9 article. However, before Extradition Commissioner Paul J. Wall, the circumstances around Tryon's visit to the well on May 7, 1914, and subsequent article in the *News Telegram* on May 8 provided the grounds for Buck's extradition. Yet in his written opinion upholding the verdict, Justice Beck referred to the Cheely article and the testimony of Norman Fletcher, not to Tryon. Furthermore, McGillivray argued Beck's opinion erred in linking Fletcher's statement that Buck "put it over" on the *Albertan* to the Cheely article when it "might equally well refer to any one of the number of similar articles written by the *Albertan* concerning defendant's alleged oil strike." Indeed, prosecutor James Short mistook Ritchie's article of May 8, 1914, for one authored by Cheely and admitted to first learning of the piece on October 4, 1916. As a final point, McGillivray reiterated that neither Cheely nor any other member of the *Albertan* provided evidence before the extradition commissioner.[15]

McGillivray then concluded the appeal by returning to his core argument—that the charge against the defendant at the extradition hearing was defective because it did not specify the statement that he allegedly concurred with, nor with whom he allegedly concurred. "It surely follows," argued McGillivray, "if the Crown proposes to convict a man of concurring with someone else in doing something, that that other person must be named, or, it must be said that he is unknown." Inasmuch as the prosecutor chose not to amend the charges as soon as the defence raised this issue, McGillivray urged the Supreme Court to overturn the conviction. McGillivray turned to his argument that an interview with a newspaper reporter did not constitute a "statement" as contemplated by section 414 of the Criminal Code. Certainly, Buck "may be said to have made a false verbal statement as to the oil in the well." But McGillivray contended that the law confined the term "statement" to mean "formal statements of the affairs of the Company in the nature of a prospectus or account." Section 414, argued McGillivray, "is not directed to the punishment of people who merely tell lies, whether for their own amusement or in the hope of gains, simply because they are directors."[16]

James Short prepared the Crown's response and quickly dispensed with McGillivray's argument that the charge did not disclose an indictable offense because it did not furnish particulars. "Particulars were not asked," wrote Short. "Nevertheless, at the opening of the trial herein they were given." Furthermore, the particulars addressed McGillivray's objection that the person with whom Buck allegedly concurred remain unnamed. On the contrary, argued Short, the particulars provided "the time, the place, and the occasion" of the false statement. "The person to whom the statement was made is not only described by his occupation but is further identified in the account of his journey to the oil well in the same motor . . . . His name, W. W. Cheely, appears at the beginning of the article containing the particulars."[17]

The prosecutor dealt with McGillivray's contention of a different charge at trial from the extradition hearing. The extradition warrant charged Buck with one count of fraud as a director and manager of the company. Short contended the particulars of the offence were not necessary to the validity of the extradition warrant. "It is the rule, not to do so. It is sufficient if it names the offense in the words of the Extradition Act." If the defendant faced different charges at trial, they could seek remedy by pointing to the evidence brought before the extradition commissioner. "He does so in this case and says nowhere is Cheely's name mentioned, and any references to the statement made by him are fragmentary." Short conceded this point and readily suggested there was a reasonable explanation. "The evidence before the Commissioner

is the evidence taken before the magistrate in the preliminary enquiry at Calgary" that resulted in Buck being committed for trial. The inquiry began with the charge of conspiracy to defraud under Section 414 of the criminal code. At the conclusion of the preliminary hearing, "the evidence of taken was applied by agreement between the Crown and the Appellant on the charge under Section 414." Thus, extradition proceedings began on all three charges, with the conspiracy charges removed when it became known that they were not extraditable. As for McGillivray's contention that Cheely's evidence never appeared before the extradition commissioner, Short countered that "ample" references existed because of Fletcher's testimony from both the affidavit and transcript of the preliminary hearing placed before Wall. Citing section 18B of the Extradition Act, Short argued the Act established the amount of proof required for extradition as the same amount of evidence required by law to "justify his committal for trial." Furthermore, the prosecution needed only establish a prima facie case to secure a trial, not present its full case.[18]

The Crown's factum then raised the question of what constituted a statement under Section 414 of the Criminal Code. Short argued that this section of the code extended back to 1869's Larceny Act. In its various iterations, the law originally referred to "any written statement or account;" only in 1892 did the words "promoter" and "prospectus" appear. Short then referred to the legal principle of *ejusdem generis*—the notion that when a law provides a specific list of items followed by a general term, the law interprets the general term to include items like the ones specifically listed. Citing the Alberta Companies Ordinance (1901) definition of a prospectus as including "any prospectus, notice, circular, advertisement, or other invitation offering to the public for subscription or purchase any shares, stock, or debentures of a company," Short suggested Buck's words were not a prospectus "but they were a statement of like nature." Buck's statement to Cheely intended "to deceive and mislead the community and induce the public to purchase the stock of the corporation." Concurring, on the other hand, noted Short, "is evidenced by the acts of the Appellant more even than by his words." Buck's actions went "far beyond concurring. He arranged the whole matter of publication beforehand by a clearly devised plan." Namely, he got the well ready for inspection, invited Charles Tryon, and two city councillors to the site specifically to "use the oil strike with their own eyes." After completing the visit, Buck urged Tryon to get out a special edition of the *News Telegram*, which Tryon refused to do. The next day, Buck arrived at the well with William Cheely and repeated the demonstration and secured a favourable article published on May 9, 1914. Short then neatly summarized the prosecution's case by contending that

Cheely's visit, the interview given by Buck, and the *Albertan's* story "were not accidental but were part of a premeditated plan" to induce people to become shareholders in Black Diamond Oil Fields as proven by Fletcher's testimony. With that, Short wrapped up the Crown's response.[19]

The five justices of the Supreme Court heard Buck's case on February 23, 1917, and reserved its opinion. Despite the growing partisan flavour of the court under Fitzpatrick, it nonetheless displayed a more collegial atmosphere than previous iterations. The practice of circulating draft judgments among the justices for comment became more common under Fitzpatrick, helping to catch errors or inconsistencies, and making rulings more robust before they become official. Nevertheless, a conservative view prevailed of the court's proper place as an intermediary body, subordinate to the Judicial Committee of the Privy Council in London. Knowing that decisions were likely reviewed in London prompted even gifted legal minds to strictly adhere to the principle of stare decisis lest their rulings be overturned. Rulings typically placed a heavy emphasis on precedent.[20] These factors likely combined to produce a decision overturning Buck's conviction as Chief Justice Fitzsimmons changed his mind between the hearing and delivering the verdict on June 22, 1917.

In a split decision of three-two, Fitzsimmons, Duff, and Anglin upheld Buck's appeal, with Idington and Brodeur dissenting. In writing the majority opinion, the chief justice reaffirmed the principles contained in the extradition treaty that a fugitive could not be committed for extradition except in cases where the crime was the same and that the person surrendered would only face trial for the crime specified during the extradition hearing. The charge leading to Buck's extradition "must therefore be gathered from the warrant and the depositions filed before the extradition commissioner." The chief justice confessed that he initially believed that "it was impossible to say that [Buck] was tried for an offence different from that for which he was extradited." But after examining the precedent of *Regina v. Balfour*, Fitzsimmons arrived at a different conclusion. The ruling in that case "would appear to be that there is no jurisdiction to try a fugitive criminal in England for any offence not disclosed by the depositions etc., on which his extradition was obtained." The reason for this ruling is that "the demand for extradition is a criminal proceeding and the accused has a right not only to cross-examine but to adduce evidence before the magistrate." To do this effectively, the defendant "is entitled to be informed of the specific offence with which he is charged." Furthermore, regarding the prosecution's claim that Buck's statements to Tryon and Cheely were one and the same, the chief justice ruled that "the publication of a statement on one day in a newspaper cannot be

said to constitute the same offence as the publication in another newspaper on another day of a statement which may or may not be to the same effect or identical with the first." The Tryon article served as the only evidence placed before the extradition commissioner, while Cheely's article served as the basis for the trial. Cheely's article "was not before the extradition commissioner and it cannot therefore be said that he was extradited for having concurred in the publication of that statement." Therefore, Fitzsimmons ruled in Buck's favour on the grounds that "it cannot be said that this indictment corresponds as it should with the depositions and information used for the application in extradition."[21]

Justice John Idington's dissent dismissed McGillivray's argument that Buck's trial charged a different offence than the one for which the United States surrendered him. He pointed to the fact that, perhaps, the court did not have the same information before it that the US extradition commission did, leaving the justices to infer its contents. This constituted a problem for Buck, "who has been convicted in a prosecution under and pursuant to the terms of a warrant of surrender." Justice Idington argued that warrant of surrender issued by Secretary Of State Lansing is "founded upon and follows in its terms the charge as laid before the Commissioner, and that we have not the right to impute to the Commissioner a neglect of duty in that regard." Evidence given by Fletcher proved Buck's admission relating to the interview given to Cheely resulting in the May 9 *Albertan* article "is in general terms and seems wide enough to cover any statement put forth by that newspaper at or about the time in question." Furthermore, Extradition Commissioner Paul J. Wall's inquiry did not seem limited in any way. Cheely's trip to the well on May 8 "was testified to by at least one witness whose evidence as well as that of Fletcher appears in the deposition submitted to that officer." When pressed about the nature of Cheely's trip to the well, Fletcher "did not think Cheely had gone merely for the ride. I agree." Idington found that the charges levelled by Short were clearly in evidence before Commissioner Wall. The commissioner and the Department of State "had before it a copy of the entire evidence" used to issue the original warrant. "The fact that there were several other charges of a like kind alleged to have taken place about the same time by another issue of falsehood, does not help the accused it seems to me, but rather tends to justify the surrender as related to any or all of them." Furthermore, Idington ruled too much "has been made of an error in relation to these other charges." The test "is not by such informations as laid before magistrates in this country," argued Idington, "but that which appears on the whole case before the Commissioner as containing evidence upon which such a warrant could

issue." Information presented at preliminary hearings "are but a means for getting evidence in a judicial proceeding" taken under oath and "constitute but a part of the entire evidence upon which the commissioner may act." Idington believed the US surrender of Buck both covered and intended to cover Buck's numerous offences "as would justify one of our own magistrates committing for trial." According to Idington, Buck's conviction fell firmly "within the grounds upon which he was surrendered and upon evidence thereof disclosed in the material laid before the Commissioner as expressive of the purpose of those demanding his surrender."[22]

Lest anyone think the court found Buck innocent, Justice Francis Alexander Anglin's opinion overturning the conviction would thoroughly disabuse them of the thought. Anglin shed no tears for George Buck. "That he committed a gross criminal fraud was overwhelmingly proved," argued Anglin, and Buck "fully deserved the term of imprisonment to which he was sentenced." Unfortunately, the court had larger questions to consider, such as Canada's standing and international reputation, than Buck's guilt or innocence. "But much as it is to be regretted that such a scoundrel should escape punishment, it is of vastly greater moment that the good faith of this country shall be scrupulously maintained and a strict observance of its treaty obligations insisted upon."[23]

The attorney general's office in Edmonton and the Crown prosecutor in Calgary waited patiently for the telegram delivering the news of Buck's verdict. Anticipation turned to disappointment that unfolded slowly over several days as initial wire reports carried only the verdict and little more. The *Albertan* reported that word of the "oil manipulator's" ruling arrived but could add little beyond that; the same held true for the *Herald*, which published a generic article providing a thumbnail sketch of the progress of the Buck case to the appeal to round out the piece. In the meantime, Popple wired back to Ottawa the following day to see if the judgment provided for a new trial, and a negative answer came two days later. An official copy of the ruling arrived on July 4, 1917.[24]

In the aftermath of the Supreme Court's decision, reporters asked whether the attorney general's office would hold Buck until he paid the balance of his bail money. Somewhat disingenuously, Popple replied the matter was still under advisement.[25] In fact, the attorney general's office had prepared for the Supreme Court to grant Buck's appeal, making plans to ensure Buck's life became decidedly more uncomfortable in the process by holding him for jumping his bail. Between the February hearing in front of the Supreme Court and the delivery of the verdict in June, the attorney general's office collected

or obtained adequate security for roughly a quarter of the $20,000 in bonds used to secure Buck's bail in 1915. Buck provided $10,000 of his own in securities, and bondspeople E.H. Crandell, John H. Poyntz, and his wife Ada Buck furnished the balance. Buck's $10,000 worth of securities disappeared like mist before the sun as property prices continued to soften because of the war, limiting the amount the province could recover. In several cases, property valuations provided for bail proved hopelessly optimistic at auction. To try and limit provincial losses on March 15, 1917, James Short suggested delaying property sales until June 23. Browning agreed and suggested that "in case Buck's appeal is successful, proceedings may be taken under Bond."[26]

The record is clear that the attorney general's office only intended to pursue a low-level harassment operation against Buck if the Supreme Court ruled in his favour. Since the province could not hold Buck on new criminal charges unless he voluntarily returned to Canada from abroad first, they decided to hold him on a civil charge for not paying his bail on the original two charges. Short reasoned that the collection of the bail debt was a civil matter and therefore was not subject to the terms of the extradition treaty. The plan reeked of pettiness and more than a whiff of spite but came together very quickly after March 15. By March 24, Short obtained conditional writs of *fieri facias* and c*apias* and issued instructions to the Provincial Police. The writ of *fieri facias* gave the province the right to seize and sell Buck's property to satisfy the bond he forfeited by dint of fleeing to Kansas. On the other hand, the writ of *capias* compelled law enforcement to arrest Buck and bring him before the court. This latter writ seemed dubious in light of the specialty provisions of the extradition treaty. Nevertheless, Short assured Browning that the instructions provided to the superintendent of the Provincial Police and the sheriff of the Calgary Judicial District dictated "no action whatever will be taken unless the appeal in this case, which is now pending at Ottawa, results in favour of quashing the conviction." The orders were highly unusual and prompted a letter from McDonell, the superintendent of the new Alberta Provincial Police, to the deputy attorney general. Noting that "it is very unsatisfactory to receive a warrant with a string attached to it;" the superintendent specifically requested written confirmation of his instructions from Browning.[27]

In the meantime, some of the bondholders pleaded with Short to reduce their obligations. Short, however, remained unprepared to grant any leniency whatsoever. One letter in particular captures the frustration of the attorney general's office and the Crown prosecutor and the seething resentment they felt toward the bondholders. In 1915, John H. Poyntz put up some of his property, including his house, as collateral for $2,500 worth of the bond. Now,

as the province moved to collect on the bond, Poyntz lay hospitalized with tuberculosis. His wife, Ruby, called on James Short to plead with him not to claim her house. Short proved unrelenting. Her husband's actions had made it possible for Buck to escape. Short said that "had her husband not given the Crown the assurance that Buck would remain for his trial the Crown would have been enabled to keep Buck in prison until his trial came on." His actions cost the Crown "over $15,000 in expenses"—nearly half a million dollars, adjusted for inflation—plus the expenses of two additional appeals. Even worse from Short's perspective was that the actions prevented him from charging Buck with two conspiracy charges that were easier to prove. "In all probability, if the easier charges had been proceeded with there would have been no grounds for appeal and the crown would have been saved the further expense of two appeals." Given the circumstances, no matter how much he sympathized with her plight, forgiving some or all of the debt "would still be a bad example to set to other bondsmen."[28]

With Buck set for release from the Edmonton penitentiary on July 4, Browning set in motion the plan for Alberta Provincial Police to arrest Buck "immediately" and return to him to Calgary. Although the press caught wind of the story, they speculated Buck "would have an option of returning to the United States" and declared it "improbable that Canada would be able to place hands on him unless he could be deported from the States at the boundary as an undesirable citizen." Yet on July 4, 1917, Browning issued instructions to McDonell to "execute the warrant in your hands arising out of the order of estreatment of bail in this case," Provincial Police duly rearrested Buck on a bench warrant signed by F.M. Graham, the sheriff of the Calgary Judicial District. The *Herald* reported the sheriff "failed to find either real or personal property of Buck" equivalent to $10,000 and issued the writ so that Buck could answer to the court. "In legal circles a good deal of surprise is expressed at the action of the attorney-general's department," wrote the *Herald* the next day. "The next move by either side is awaited with considerable interest." Asked by the *Albertan* if the province would take Buck to the border if he paid his bail, Short bluntly said no. "We would set him free here. He would then be allowed a reasonable time to get back to the [United] States, and if he did not do so he would be rearrested and tried on the other two charges."[29]

Despite the dubious legality of the attorney general's moves, negotiations began between James Short and Alexander McGillivray to find a mutually acceptable solution, and by July 13 the framework of a deal emerged. In exchange for serving a modest prison sentence to satisfy his outstanding debt, Buck agreed to leave the country. Short wired A.E. Popple to determine "the

least term" Buck should serve. In a handwritten note on the back of the telegram, Popple specified that he would be satisfied with a term of two months or less but added the caveat that McGillivray would not take any further action. The message—minus the warning prohibiting future action by McGillivray—arrived back in Calgary via night letter. As negotiations continued, Buck's prison term contracted to one month, but the attorney general's office insisted that this would become conditional upon Buck's other bondsmen—Crandell, Poyntz, and Ada Buck—remaining responsible for payment of their bonds. Although Alexander McGillivray did not believe that the province's actions were entirely legal, he was "very anxious" to settle the matter expeditiously. Indeed, McGillivray told Short's law partner, Maynard Mayhood, that "it is a matter of indifference to him" if the immunity provision promised by prosecutors was in writing "so long as he has it definitely stated that such is the understanding." Browning pushed back and drew a line at granting Buck any kind of immunity. "If this is not agreeable to Mr. Buck's counsel then he is at liberty to take any proceedings he may deem advisable." The final deal between the two sides stipulated that Buck's one month in prison would "constitute full satisfaction of the indebtedness of the said George E. Buck." Upon completion of the month-long incarceration, Buck's "freedom and immunity" would "continue for a period of not less than ten days" to enable him to return to the United States.[30]

On July 23, 1917, Buck appeared before Justice William C. Ives of the Alberta Supreme Court and agreed to the deal worked out between McGillivray and Short. As Short reminded Browning, the Crown secured its right to recover the bonds from the other bondholders. "This," wrote Short, "was merely a measure of caution." More to the point, Short wrote that the deal "completes the matter, which has claimed our attention for a long period." At best, it seemed an anticlimactic end. "The sale of the lands of Mrs. Buck and Mr. Poyntz is to take place on Saturday, [July] 28[, 1917]. There does not seem to be much prospect of a sale as nobody seems anxious to buy."[31]

Starting on August 15, 1917, following Buck's release from prison, the attorney general's office gave Buck ten days' grace to settle his affairs and get out of the country. The press expressed some concern over Buck's plight, with the *Albertan* worrying whether he could obtain a passport in time and if the US government would consider him a desirable citizen. Considering recent events, "his chances of getting by are slim," predicted the newspaper. A different reporter phoned the Buck residence to see if he remained in the city but could not get a statement from the person who answered the phone.[32] Nevertheless, Buck and his family crossed the border without incident and

relocated to Spokane, Washington. Unwilling as he likely was to test the resolve of the attorney general's office, there is no evidence that Buck ever returned to Alberta.

George Buck and his family adjusted quickly to life in the United States after their relocation to Spokane following exile from Canada in 1917. The first mention of the Bucks occurred in the Society pages of the *Spokane Chronicle* as daughter, Kathleen, married Ralph Burnett in June 1920.[33] As for George, old habits die hard. Following the Great War, fears abounded that existing oil supplies were insufficient to meet growing consumption, producing a rush of investments into exploration and development across North America. Surface oil seepages near Chewelah (45 miles northwest of Spokane) periodically attracted the attention of oil prospectors Gus Fritchie and Fred R. Burdette after 1905. Digging a hole by hand, they abandoned their first well because oil and gas odours proved too strong. Periodically, Fritchie and Burdette revived their efforts, and by 1920 they reported digging a second well to 52 feet with pick and shovel when gas odours again forced them to stop. Still, the prospectors reported digging through 15 feet of "solid oil shale."[34] Efforts ramped up in February 1921, when *The Colville Examiner* reported that the Chewelah Valley Oil Company filed eight oil leases with the county auditor. In late August 1921, George E. Buck and his partner, George L. Fisher, incorporated a new joint stock oil company, the Chewelah Basin Oil Company, to drill for oil in the Inland Northwest.[35]

Based out of Spokane, the Chewelah Basin Oil Company filed a prospectus claiming $400,000 of treasury stock with a par value of twenty-five cents a share. In many respects, Buck remained the same bundle of frenetic energy and hype, peppering reporters with word of his experience as an oil promoter, although careful observers noticed details remained sparse. A few weeks later, Buck opened local offices for the company at the Yale hotel in Colville, Washington.[36] Within two months, Buck announced that Chewelah Basin's drilling rig "will be set up complete for drilling within 30 days." Investors looking for a wonderful opportunity could buy shares starting in a few days at ten cents a share. "We have had geologists report on our holdings," Buck told the *Spokane Press* on October 22, 1921, "and feel confident that we are located on one of the greatest structures in eastern Washington." Days later, Buck claimed state geologists had completed two surveys and their reports would guide the company's activities. "The existence of a perfect formation is reported," noted *The Spokane Spokesman-Review*. Four days later, at a meeting of the Chewelah Chamber of Commerce, Buck asked the chamber to help

finance the drilling of the first well. The chamber responded enthusiastically, and many of the fifty attendees pledged personal support.[37]

Investors in Black Diamond Oil Fields would likely recognize a well-worn formula. The old oil promoter claimed operations based according to "scientifically-based" principles would be the standard. Geological experts attested to the certainty of an oil strike on the company's land. References to similar success and expertise abounded. Frequent announcements flooded newspapers, conveying the appearance of action. But more than anything else, the absence of capital to finance drilling would be all too familiar. Admittedly, without the support of a larger boom taking place to help sustain it, Buck's act in 1921 proved too threadbare and the Chewelah Basin Oil Company collapsed within a couple of months. Two weeks after the October 25, 1921, announcement that the company would begin drilling within thirty days came another announcement that the acquisition of 5,000 acres of land pushed back the original timeline to December.[38] Predictably, the company's demise triggered at least one lawsuit as Buck sued the drilling company to recover drilling costs. That proved to be the last mention of the Chewelah Basin Oil Company. It is also the final connection of George Buck with oil and gas promotion. Only in retrospect does it become obvious how little the company accomplished. The State of Washington's Department of Natural Resources recorded no drilling information from the company and a 1930 newspaper article noted three previous attempts to drill for oil in Colville county all at the same location. None, prior to the Indian Foot Oil Company, including Buck's Chewelah Basin Oil Company, moved beyond selecting the well site.[39]

Fleeting glimpses of George Buck's life after backing out of the oil industry dot the public record. By the mid-1920s, Buck's marriage to Ada unravelled when daughter Kathleen filed for divorce from Ralph Burnett.[40] The dissolution of the daughter's marriage, in turn, caused strains between George and Ada Buck. "I thought the trouble was my daughter's fault and wanted her to go back to her husband," testified George Buck, who now identified his profession as a car salesperson rather than an oil promoter. "But my wife thought she should get a divorce and trouble resulted. We then separated." Asked why he wanted a divorce, Buck responded that "I do not want to be married to woman who does not care for me. In fact, I believe she never cared for me." Harsh words, indeed, for the mother of his five children and the woman who endured so much in the service of Buck's various schemes. The attorney pronounced to the presiding judge that the case represented "the saddest kind of divorce. Here is an old couple seeking a divorce after 30 years of married life."[41] Within six months of the divorce from Ada, in December

1925, Buck remarried a Spokane pioneer, the widow Clara Carr. Ada never remarried and lived to be ninety-two years old, passing away in California in 1958.[42]

Occasionally, word of the old promoter surfaced, usually in connection with lawsuits filed over unpaid commissions as Buck turned his full attention to auto sales.[43] Buck's last big splash occurred during the Depression, when he became a vocal supporter of retired California doctor Francis E. Townsend, who briefly became a populist icon during the Depression. One morning while shaving in 1933, Townsend claimed he glanced out his window to see three old women rummaging through his garbage cans for something to eat. Outraged that the women were reduced to such circumstances, Townsend vowed to do something about it. In the pages of the Long Beach *Free Telegram,* he first advanced the Townsend Recovery Plan, which advocated the development of an old-age pension plan that would see the federal government institute a 2 percent sales tax to pay $200 a month to every American over the age of sixty who agreed to stop working. The sole caveat was that the recipient must spend the full amount every month, recirculating the money and reviving the economy in the process. The plan appealed to middle America, embraced traditional values, and promised to save capitalism from collectivism, socialism, and communism. Critics who investigated the plan estimated that, with ten to twenty million eligible Americans, the benefits would accrue to 9 percent of the population, consume half the national income to fund, and require a police state to enforce. Nevertheless, at a time when caring for the elderly typically fell on family and relatives, the idea of establishing some kind of national pension proved incredibly popular. An estimated twenty million people signed petitions in support of the plan and thousands of Townsend Clubs sprang up across the United States, including in Washington state, where a sixty-six-year-old George Buck served as president of Townsend Club No. 10, the largest in Spokane. Historian Robert Dallek compared Townsend club meetings to old-time religious revivals complete with "prayers, hymns, and shouts of 'amen.'" Exhorted with evangelical fervour by Townsend, now referred to as "the Founder," supporters lobbied Congress and the Senate to adopt the scheme. The movement, according to Townsend, embraced people "who believe in the Bible, believe in God, cheer when the flag passes by, the Bible Belt solid Americans."[44]

As a lifelong Democrat, Buck supported the incumbent president, Franklin D. Roosevelt and the New Deal through the summer of 1936 but abruptly changed allegiances as the November presidential election drew closer. In late October 1936, much to the consternation of local Townsend

Club officials, Buck urged Townsendites to vote for the Republican candidate, Governor Alf Landon, warning, "You can kiss the Townsend Plan goodbye forever if Roosevelt is re-elected." Briefly, Buck returned to his element as iconoclast and prognosticator, able to see what others could not. Denouncing FDR and the New Deal as failures, Buck further declared that the Townsend Plan was the only viable option to save the United States from the alternatives of fascism or communism. With Landon in the White House and New Dealers in control of Congress, Buck argued a Republican president must form a political coalition with Townsendites to enact his agenda. The price would be making the Townsend Plan a reality.[45]

Involvement with the Townsend clubs returned Buck to more familiar trappings at the centre of a larger movement, this time political rather than commercial, where his ability to attract attention garnered favourable notice. However, Buck's political acumen proved no better than his ability to drill a producing oil well. Despite Buck's best efforts, Franklin Roosevelt won the 1936 election over Landon in a landslide that remade US politics for the next thirty years with the creation of the New Deal coalition. With this new majority, Roosevelt passed his signature reform, the Social Security Act.

When he passed away at the age of seventy-six in January 1944, Buck's obituary claimed he was a retired automobile insurance salesman and included no mention of his origins in Canada, nor his time as an oil promoter in Turner Valley, Kansas, or just outside Spokane. Perhaps the family simply wanted to forget, or preferred just tacitly acknowledging with silence that, as an oil promoter, George Buck never produced a barrel of oil apart from that which he poured down Black Diamond #1 in 1914. As it turned out, that would be the only oil that well site ever produced.

The second Turner Valley era (1924–1936) that began when Royalite drilled into the Madison limestone, deeper than any other well in western Canada, revived interest in Turner Valley as a natural gas producer. It also led to the renaissance of both the Black Diamond Oil company and interest in the original Black Diamond well site. At approximately the same time that George Buck divorced his first wife in June 1925, new investors revived the Black Diamond moniker under a federal charter after buying the assets of Buck's old company. Calling themselves the New Black Diamond Oil Company, the new owners announced plans to extend the original well much deeper—to 8,000 feet—with rotary rig technology. As the *Calgary Herald* pointedly reminded investors, "the old company was wiped out long ago" and therefore this constituted a new enterprise. Consciously or not, however, the New Black Diamond Oil Company borrowed Buck's faith in the location, emphasizing

the quality of their leasehold as the best in the field. The new company also hinted that they would work out a deal with stockholders of the old company, but the details remained fuzzy. The New Black Diamond enjoyed some success as a natural gas producer, surviving the Great Depression and the Second World War before winding up corporate operations in 1961. But the success they did have came because of production from other wells; like Buck they, too, had little success at the original well site.[46]

Black Diamond #1's last kick at the can happened in 1950. During the Second World War, Shell expanded into Alberta with the creation of Shell Exploration, eager to acquire new production to offset losses of traditional supplies in Asia. Included in the 450,000 acres of mineral rights bought by the company were those to the original Black Diamond site. Despite the pressure to find alternative sources of supply, Shell limited exploration efforts to seismic surveying of the region.[47] Only after Imperial Oil's Leduc discovery in 1947 in the much deeper Devonian limestone revived interest in the eastern half of the Turner Valley field did Shell begin a serious drilling program. In early 1948, Anglo-Canadian Oil, then one of Canada's largest independents, announced it would extend the old Black Diamond #1 down 10,500 feet, with Shell paying the exploration costs.[48] Labelling the well "Anglo-Black Diamond #1," the company bored down to 9,309 feet before trying to stimulate oil production with acidization with no success. When a second acidization treatment failed, Anglo-Black Diamond declared the formation too tight and abandoned the well in March 1949. Despite another deep test a year later, this time below 10,000 feet, Shell abandoned the well again, this time for good. In the late 1970s, one long-time resident of Black Diamond, familiar at least in passing with George Buck and his various schemes, provided one final update on Black Diamond #1: "the well never amounted to much although it did produce a little coal oil."[49]