

# COUNSEL FOR EMIL NERLICH SAYS THE CROWN WAS UNFAIR

## Alleges That Mr. DuVernet Went Beyond the Facts of the Case

## ONLY A FLOURISH, COMMENTS JUDGE

## Mr. Hellmuth Contends That the Jury Was Improperly Influenced

At the resumption of the hearing of the Nerlich case before the Divisional Court at Osgoode Hall this morning Mr. Hellmuth, counsel for Emil Nerlich, made a general arraignment of the conduct by the Crown counsel of the case of conspiracy against Emil Nerlich at the recent trial. He charged that Mr. DuVernet's address had been inflammatory, and also that that gentleman had made statements to the jury that were not justified by the evidence. When the counsel for the Crown had said that he would show that one man who had been assisted out of the country was fighting for Germany on Canadian money, he had gone beyond the facts, and it was an improper statement.

Chief Justice Meredith—"But he did not try to prove it. It was merely a flourish, a rhetorical flourish."

### Influenced Jury.

Again, urged Mr. Hellmuth, when the Crown counsel had quoted Zirzow as saying he would like to go and fight if he could, he was improperly influencing the jury, because that statement, which was Police Court evidence, and not given at the jury trial, should not have been presented to the jury at all. Nor had the counsel for the Crown any right, Mr. Hellmuth contended, to comment, as he had, on that statement and endeavor to impress the jury with the belief that it showed that Zirzow fully intended to go and fight if he could get out of this country.

### Effect of Evidence.

Chief Justice Meredith—He was merely giving the jury the effect which the evidence had made on his mind.

Mr. Justice Kelly asked if the Crown Counsel was not entitled to ask the jury to believe a statement of a witness even though that statement was subsequently contradicted as was the case in this instance.

Mr. Hellmuth said that this particular evidence had been given in the Police Court and contradicted at the trial at the Assize Court and it should not have been used by the Crown.

Chief Justice Meredith—It was for the judge, if he thought fit, to warn the jury that this was not evi-

dence and that they should not give it attention.

### Information for Enemy.

Another statement in Mr. DuVernet's address to which Mr. Hellmuth took strong objection was that information had been given to the enemy from here whereby the four British vessels in the Pacific had been lost. Such comment was quite unjustifiable.

Chief Justice Meredith said that that kind of address was "mere rhapsody."

### What Zirzow Said.

Zirzow's remarks to the police officer after the Police Court hearing, that "I let Nerlich down pretty light," was also inadmissible as evidence, as it has subsequently been contradicted at the trial. But notwithstanding that it had been made effective use of by the counsel for the Crown. All these statements, Mr. Hellmuth argued, had been given to the jury as the true facts, although they were not so and should never have been admitted, and it was on them that the jury had based their verdict against the accused. The fact was, Mr. Hellmuth said, there was no evidence, no admissible evidence, on which the jury could have found Nerlich guilty of traitorous conspiracy.

Chief Justice Meredith—"You are now reverting to your argument of yesterday."

Mr. Hellmuth—"Yes. The jury was improperly influenced by inadmissible statements. Take out the testimony of Kennedy and of Zirzow in Police Court and there is nothing whatever on which to found a conviction."

Mr. G. W. Mason followed Mr. Hellmuth in favor of quashing the conviction and cited authorities supporting the contentions put forward in Mr. Hellmuth's argument.

### Ample Testimony.

Mr. J. R. Cartwright, deputy Attorney-General, opened the argument for the Crown. He quoted at some length from the evidence to show that there was ample and definite testimony on which to find a verdict against Nerlich. He spoke of the intimacy between Nerlich and Zirzow, and said that it was undeniable that the former knew all the plans made by the latter for getting to Germany. The intimacy was of considerable standing and was of such a nature that Zirzow had promised to write to Nerlich from the trenches. He had denied, it is true, that he had promised to write to Mrs. Nerlich but he had stated clearly that he would communicate with Mr. Nerlich.

### Complete Understanding.

Mr. Cartwright quoted as very significant of Nerlich's connection with Zirzow's plans his remark that he had to be careful when he was told that he had given the \$10 to Zirzow. Why, too, had Nerlich expressed surprise when he learned that Zirzow had got the exact. Why, because he knew Zirzow was going to Germany. The call of honor, Zirzow's expression, and other expressions used by him, all went to show that Nerlich and Zirzow were in complete understanding.