

# DID THE CROWN RHAPSODIZE AT NERLICH TRIAL?

## Defendant's Counsel Complains That Crown Prosecutor May Have Inflamed the Jury.

### UNTENABLE TALK NOT AT ALL NEW

#### "Statements Not Warranted by Facts" are Made in Court Thousands of Times.

In continuing this forenoon his argument on Emil Nerlich's appeal from his conviction on a conspiracy charge of having assisted the King's enemy, I. F. Hellmuth, K.C., fortified by tiers of law books, emphasized his objection to the Crown counsel's address at the trial.

"I should think that is more for the Law Society than for this court?" queried Chief Justice Sir William Meredith, of the First Divisional Court.

Mr. Hellmuth did not concur, and complained that certain statements should not have been admitted. They were not warranted by the facts.

#### Nothing New In Court.

"That is done thousands of times," commented the Chief Justice.

"Was the trial judge's attention drawn to the lapses?" asked Mr. Justice Maclaren.

"Yes, objections were taken."

As to "fighting on Canadian money," Sir William wanted to know if the Crown prosecution had shown it. "No," answered Mr. Hellmuth.

"Then it was just a flourish," observed the Chief Justice, calmly.

Mr. Hellmuth took issue with the remark, attributed to Lieut. Arthur Zirzow. "I told him (Nerlich) that I would fight if I could." Such a statement should not have been admitted.

"We listen to untenable arguments every day," said the Chief Justice. "The Crown Counsel had a perfect right to present his argument; the trial judge might have cautioned the jury."

#### Mr. DuVernet Objects.

Mr. E. E. A. DuVernet, K.C., found fault with Mr. Hellmuth's allegations. "The statements made are not correct," declared the Crown lawyer.

"Let us proceed," pleaded Sir William.

Mr. Hellmuth continued his censure of the prosecution, but the Chief Justice labeled the "lapses" quarreled with as "all rhapsody."

"That kind of rhapsody should not have been allowed," urged Mr. Hellmuth. "The jury should not have been inflamed."

Arthur Zirzow, on whose behalf Nerlich had given \$10, had said certain things in the Police Court, but at the trial in the higher court stated they weren't true.

The Chief Justice pointed out that Zirzow had perjured himself, and admitted it, too.

The court asked whether Zirzow was a co-conspirator, and Mr. Hellmuth replied that, if such were the case the testimony could not be used against the accused.

"Improper," says Mr. Hellmuth.

"As to the statement, 'I let the Nerlich's down lightly,'" said Mr. Hellmuth, "it should not have been admitted, and yet, it was given to the jury as evidence. Coming from Zirzow, would that not affect the jury?"

"But Zirzow made incriminating statements in the Police Court, and he withdrew them at the trial," said the Chief Justice. "Didn't the jury disbelieve Zirzow? He was a confirmed perjurer."

Mr. Hellmuth feared that the jury was influenced. "Cut out Zirzow's evidence, and there was nothing on which to convict Nerlich."

"You said that yesterday," reminded the Chief Justice. "The jury believed that he got the money."

Mr. Hellmuth submitted that Inspector Kennedy's testimony and Zirzow's should have been eliminated, and, if it had been, Nerlich could not have been convicted.

It was suggested that Mr. Hellmuth must prove that substantial wrong or injustice had been sustained.

#### Counsel There to Explain.

Mr. Hellmuth didn't like the Crown Counsel's opinion that "when we find people with this correspondence, they must explain."

"Why, you were here to explain," smiled the Chief Justice.

Mr. G. W. Mason, associated with Mr. Hellmuth, cited references for the guidance of the court.

#### Zirzow's Brother at Front.

Mr. Mason charged that, when the case was opened, and later the Crown counsel had made remarks calculated to influence the jury, and in connection with which no evidence was adduced. For example, Zirzow's brother, it was said, was fighting for Germany at the front.

"Never mind all that; we can read for ourselves," demurred the Chief Justice.

J. R. Cartwright, K.C., Deputy Attorney-General, did not believe that the \$10 alleged to have been given to or for Zirzow was the bona fide payment of a debt. Mr. Cartwright did not like the manner in which the money was paid.

"Why was not Emil Nerlich called?" Mr. Cartwright asked. He wondered, too, why the Krausmann waiter had not been examined.

#### To Write From Trenches.

Nerlich and Zirzow were not mere casual acquaintances in Mr. Cartwright's mind. Zirzow had been at Nerlich's house and dined at the Prince George. Zirzow's own signed statement and evidence were mentioned. Zirzow, when asked if he had promised to write Mrs. Nerlich from the trenches, answered: "No, only to Mr. Nerlich."

Nerlich's surprise that Zirzow should have secured an exact indication that he knew what was in Zirzow's mind.

"He might be surprised at any-

one's getting an exeat?" said Mr. Justice Maclaren.

"It strikes me as some evidence that Nerlich knew what Zirzow wanted, and he was surprised at his getting an exeat," returned Mr. Cartwright.

Mr. Cartwright defended the indictment, and had not completed his argument at the one o'clock adjournment.