

NERLICH COUNSEL LOSES A POINT, CROWN SCORES

Crown Did Not Want to Call
Certain Witnesses, and
Is Upheld.

Technical objections to the form of the indictment which charges him with committing high treason, was the feature at the trial of Emil Nerlich, which opened before Mr. Justice Sutherland and a jury in the Assize Court at the City Hall. Following the argument of counsel for the Crown and defence, his Lordship ordered that the indictment be amended in "matter of form, not in matter of substance." He also directed that the indictment should be separate the three counts against Nerlich; assisting and inciting Arthur Zirzow to leave the country; giving information to the enemy, and trading with the enemy. Mr. Justice Sutherland stated that one or more counts should be tried separately. The lawyers left the court and half an hour had elapsed before they returned. Mr. Nerlich was then arraigned on the first count of "inciting and assisting" Zirzow. He pleaded "not guilty," and the trial commenced. The accused sat in the prisoner's dock. He was perfectly calm.

His counsel are: I. F. Hellmuth, K.C., George F. Shepley, K.C., and Mr. W. G. Mason. W. C. Mikel, K.C., of Belleville, is conducting the case for the Crown, assisted by County Crown Attorney R. H. Greer, and Mr. Gordon J. Shaver.

Objects to Form of Indictment.

Before the accused was arraigned Mr. Hellmuth took objection to the form in which the indictment was drawn. "I desire to take exception to the indictment which I submit must be amended to conform with

the statutes," said Mr. Hellmuth. "It laid under section 74, sub-section

The words "comfort and aid" the enemy were not in the Canadian Treason Act, but were taken from the English Act.

"It must read in effect," continued Mr. Hellmuth, "that he maliciously and traitorously assisted a public enemy at war with his Majesty by inciting and assisting Arthur Zirzow."

Mr. Hellmuth then argued that the three counts should be tried separately and not under the one charge. This was not done at the conspiracy trial, and had occasioned no little trouble.

In reply, Mr. Mikel said that it was sufficient to allege that the act of treason had been committed in any form and that it was not necessary to include the definition of treason.

His Lordship stated that the decision of the Court of Appeal had strengthened his decision that the events should be tried separately.

Before a jury was selected the jurors were challenged for the Crown. All those called were satisfactory to the defence and they made no objection.

Nerlich Not Naturalized.

Addressing the jury on behalf of the Crown, Mr. Greer said that treason could not only be committed against the King but against the people. Reviewing the case, he said that although Mr. Nerlich's father had become a naturalized British citizen, the accused, born in Germany had not. Mr. Henry Nerlich, the accused's brother, conducted the local end of the Nerlich firm's business while Mr. Emil Nerlich looked after the European. It was alleged by Mr. Greer that Nerlich had met Zirzow three or four times before the declaration of war.

"Zirzow was unable to get back to his country because of two reasons," said the lawyer. "One was that he was in poverty and the other because he had promised the Government he would report to them at stated periods."

Mr. Greer said that on a document found in his office after a recent warrant had been issued, were particulars of Zirzow. This prosecution was not taken because the accused was of German descent. He did not want a verdict returned against the accused because of his name or friends.

Desire to Uphold Fair Play.

"We desire to uphold the traditions of fair play."

Before taking evidence Crown Prosecutor Mikel said that he not propose to call Dr. Hoffman, H. Peters, or Otto Hoch, who had been subpoenaed as Crown witnesses. Mr. Hellmuth was immediately on his feet with objections. The witnesses should be called in the order their names appeared on the indictment. Mr. Mikel said he did not wish to call these witnesses as he did not think they could give any material assistance. He thought if they were to be called it should be as witnesses for the defence. Dr. Hoffman was called but no questions were asked him.

"I am not taking the defence by surprise," said Mr. Mikel, "as I agreed with Mr. Hellmuth a month

ago that we would not require those witnesses.

This stand resulted in a victory for the Crown, his Lordship holding that the defence did not wish to cross-examine Dr. Hoffman, they must take the consequences. Mr. Hellmuth took up the cross-examination remarking: "It is unfair. I have never heard of such a thing ever being done before in a Canadian criminal court."

Dr. Hoffman's Evidence.

Dr. Hoffman, who is pastor of the Lutheran Church, said he had known Zirzow. He had come to the minister and asked him to give him a letter which he wished to present to Judge Coatsworth. "He said he wanted to go to New York to secure work," said the witness. With this letter Zirzow received an exeat from Judge Coatsworth.

"Do you know anything of the German military law?" said Mr. Mikel. "I guess I do. I have been a soldier myself," replied the witness.

Mr. Henry Peters translated a document which gave Zirzow the privilege of the German Club while in Toronto.

"Are you a member of the club?" he was asked. "I was. It is out of existence now."

Henry Nerlich, brother of the accused, was the next witness called by Mr. Mikel. He was asked to identify a card. "These we attached to our fall catalogues," said the witness. "We had so many inquiries about our nationality." The card says: "We are British subjects by birth."

The witness continued that he believed he and his brother were British subjects owing to the fact that their father had become naturalized. He had made sure that he would not be troubled by the military authorities in Germany. They told him that he was not a German.

"Have you made an application for naturalization?" "I have not made an application. I consider myself a British subject."

"Did you have any conversation with your brother after the trial about Zirzow?" "I asked him if he knew Zirzow was going back to Germany, and he said 'no.'"

"Did you express any opinion as to the outcome of the war?" "He told me it was to his interest that Great Britain should win the war."

"Did he say anything that this war would be the end of England and her colonies?" "Absolutely no."

"Does your brother take any German newspapers?" "I do not know. I have never seen any in his house."

On Friendly Terms With Brother.

In reply to Mr. Mikel, the witness said he was on friendly terms with his brother. In private matters, however, he did not see much of him.

"Did you know how your firm got their mail from Germany?" "No. Not until the last trial."

"How do you get your mail?" "Direct."

Mr. Nerlich said he got his first passport in Dresden in 1895. It was secured from the British consul, and renewed in 1912. His brother, the accused, made trips to Europe every year to purchase good. He usually made the trip in January and came back any time from May to July.

The prisoner was granted bail during the adjournment for lunch.

The Nerlich Jury.

The following comprise the jury which is hearing the evidence in the trial of Emil Nerlich: John Kerr, Jr., Vaughan, farmer; Arthur W. Farr, farmer, Vaughan; William Canning, farmer, Scarboro; William Bilbey, varnish maker, 132 Coxwell avenue; P. Bedford, 1 Boothroyd avenue, builder; Henry Ellis, farmer, East King; William R. Barefoot, photographer, 306 Margueretta street; Jas. Atkinson, farmer, Scarboro; Elgin Barker, farmer, West Markham; N. B. Billings, tent maker, 775 Queen street west; William Brooks, farmer, East Gwillimbury; Stephen Bosworth, tool maker, 516 Concord avenue.