

# NERLICH CASE NOW LIES WITH THE JURY

## Chief Justice Sir William Mulock Sums Up the Evi- dence

### MATTER OF INTENTION

## Counsel For Defence Asks, and is Granted, Reserved Case

The Nerlich case went to the jury at 3.25 after the summing up of the case by Chief Justice Sir William Mulock. His Lordship went over in detail the evidence which had been brought out, and laid before the jurors several questions for them to ask themselves. He laid special stress on the matter of whether or not there was treasonable intent in the payment of \$10.00 by Mr. Nerlich to Lieutenant Zirzow.

Mr. I. F. Hellmuth, K.C., counsel for Mr. Nerlich, asked for and was granted a reserve case. In his application he made mention of certain statements made by the Crown Prosecutor and also by his Lordship in his charge to the jury.

His Lordship's charge opened the afternoon session of the case.

There were two propositions involved in the charge against the prisoner, Chief Justice Mulock pointed out, in opening his charge. The first proposition was that the accused had conspired to give assistance to the enemy. The second was that the means contemplated were treasonable.

If the Crown failed to establish either, it would fail to establish the charge. It must establish that there had been a conspiracy, and that the object of this conspiracy was to commit the indictable offence of treason.

Taking up the meaning of treason, His Lordship pointed out that others than natives of the country might commit treason. Anyone residing under the protection of Canadian laws might commit what might be regarded as a treasonable offence. It was treasonable to assist any public enemy at war with Canada, in such a war by any means whatever.

"But," he continued, "I have an opinion which I ask you to accept, that the mere act of rendering assistance to the enemy does not constitute treason. Before a man may be found guilty of treason, the jury must be satisfied of traitorous intent."

As an illustration, he pointed to the actions of Rev. Mr. Hoffman, who wrote a letter asking that an exeat be granted Zirzow, and Judge Coatsworth, who granted the exeat. Neither of these could be held guilty of treason, because their intention was entirely innocent.

#### Intention Not Punishable.

On the other hand, the mere intention, without any "overt act," was not punishable.

Therefore, to find the accused guilty, it must be shown that he had contemplated giving assistance to the enemy, and that the intention had been traitorous. If either one or the other—either the act or the traitorous intent—were found to be lacking proof, then there could have been no treason.

If, then, it were found that the intention and action of the accused had not been treasonable under the above definition, neither could there have been any conspiracy in which case the whole charge fell down.

It was not necessary, however

that the intention of treason should have been carried to a successful conclusion to prove conspiracy to this end.

"Ask yourselves these questions," said his Lordship:

"Was it Zirzow's intention to return to Germany?"

"Had the accused reason to believe that such was Zirzow's intention when he contributed ten dollars to his funds?"

"Whether the object of the accused in giving him the ten dollars was to assist him toward a common purpose."

#### Matter of Intention.

"If Zirzow's intention was to re-join the German army, and if the accused thought this to be his intention, and advanced him the ten dollars to help to carry out this intention, then it is open to you to find that Zirzow and the accused had the common purpose of aiding the enemy, and conspired together in this common object.

"If however, the accused believed that Zirzow desired merely to go to New York, and not to go to join the German army, then the accused's action was one of aiding him merely to leave Canada, and was not traitorous, but an innocent action, and he would be entitled to acquittal."

There was no evidence of the accused having indulged in trade with Germany, said his Lordship. Nor was there evidence that he had sent information to the enemy.

The only overt act, he stated, was in the assistance he gave to Lieutenant Zirzow in leaving Canada.