

NERLICH CONVICTED OF ASSISTING ZIRZOW

Jury Says Guilty in Case of German Merchant

CASE TO BE APPEALED

Accused Gave Former German Officer
\$10 When He Wanted to Leave
Canada—Hot Exchanges Between
Counsel—Judge's Calm Advice.

Emil Nerlich, the prominent German wholesale merchant, was yesterday found guilty in the Criminal Assizes on the charge of conspiracy to commit an indictable offence by assisting Arthur Zirzow, former officer in the German army, to leave Canada and join the enemy's forces. The accused has been a resident of Toronto for 27 years, and his wealth and social position have caused the case to be followed with sensational interest. Leave to appeal was granted by Sir William Mulock, and pending its immediate hearing, sentence was deferred, and Nerlich allowed out on bail of \$100,000.

The original indictment, which was "conspiracy to commit high treason," and which was afterwards modified, contained the names of both Mr. and Mrs. Nerlich. When, at the instance of the Chief Justice, the jury were instructed to acquit Mrs. Nerlich, on the ground of insufficient evidence, the liveliest interest was expressed in the fate of her husband, and the judgment of the Appeal Court will be awaited with considerable curiosity.

The One Overt Act.

In his address to the jury yesterday Sir William Mulock informed them that there was no evidence on the second and third counts of the indictment—namely, of "trading with the enemy" and "giving information to the enemy."

"It looks to me," he said, "as if the only overt act on which there is any evidence is that of assisting Arthur Zirzow to leave Canada. It is for you to say whether or not Nerlich, with a guilty knowledge that Zirzow was intending to leave Canada, assisted him by payment of \$10.

"It is said that the \$10 was paid to Kleinz to pay Zirzow's debts. I see very little difference. Payments of

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his debts would facilitate his departure from the country."

His Lordship said that the indictment against Emil Nerlich involved two propositions: In the first place, that the accused entered into a conspiracy to render assistance, and secondly, that the means whereby that assistance was rendered were treasonable. If the Crown failed to establish either of these points, it failed to establish the charge.

Protection and Allegiance.

The protection of the law extends to everyone in the King's dominions, whether **allens** or otherwise. In return the individual owes allegiance to the King. Failure to bear true allegiance was treason.

"Notwithstanding the language of the code," continued his Lordship, "I am of opinion (and you must be governed by my view of the law) that the mere act of rendering assistance does not make the person rendering it guilty of treason. Before he can be found guilty of treason the jury must be satisfied by evidence that such assistance was being rendered with traitorous intent."

Treasonable intention was what constituted the crime, but, the Judge pointed out, the Crown must prove overt acts on the part of the accused which will establish his treasonable intention. The accused was not being charged with treason, he said, but with conspiracy to commit treason. Explaining conspiracy, he stated that a common design was the essence of conspiracy.

Was There Guilty Intent?

Did Zirzow and Nerlich have a common design and pursue it by these common means? Was it Zirzow's intention to return to Germany and rejoin the German army? Had the accused reason to believe, and did he believe, that such was Zirzow's intention? Did the accused give Zirzow \$10 to assist the latter to accomplish that purpose? These were some of the questions his Lordship asked the jury to consider.

"If you cannot satisfy yourself reasonably that the accused had a guilty intent, then your duty is to acquit him," the Judge continued. "If the circumstances of the case warrant you to assume that he had a guilty intent, then he was guilty of treasonable conduct. Consider the circumstances. Is there any inference to be drawn from the fact that Nerlich did not pay the money direct to Zirzow? Was he afraid that he might get into trouble? Or was it for the honest purpose of seeing that Kleinz was paid?"

Calls It an Outrage.

In objecting to some points of his Lordship's address to the jury, Mr. I. F. Hellmuth took exception to the Crown Counsel's preliminary address to the jury, on the ground that it was of an inflammatory nature. "I submit," he said, "that the whole of the address of the Crown Counsel was an outrage and should not have been made in this court."

His Lordship replied that Mr. Du Vernet's address could be included as one of the features of the stated case.

Defence Lawyer Protests.

In his address to the jury Mr. Hellmuth vigorously attacked the methods of the prosecution. The Crown Prosecutor, he declared, had played upon the perfectly loyal feelings of the jury. "Would any stone be left unturned, he asked, in efforts to convict the accused by a detective officer, who stated to the press that the whereabouts of a man was unknown when that man had for three days been in his office and at his usual place of residence?"

"Of course," he said, "one can see the genesis of all this in the work

of evil-minded people, gossiping people. The police watched his house for a month, and fancy the result of a month's watching thrown before you here in the shape it has come. One can't congratulate the police in this matter with having any overflow of brains. The men who could not find Nerlich for four days could find, in their imagination, information supplied to the **enemy**. We courted this trial to show how monstrous the charge was.

Calls it "Charity."

"The Crown would like to tie us up with Zirzow." We repudiate entirely the connection. We gave him charity, and he grossly abused our hospitality. What honor has Zirzow—the honor that the Crown spoke so much about? Would you condemn anybody on the evidence of a self-confessed liar? It would be a sad blow to our pride if it could be said that a jury of twelve men can be swayed by the impassioned pleading of the Crown Counsel."

Mr. Du Vernet's Hot Shot.

Mr. Du Vernet put his case with his usual eloquence. "I repudiate any idea that I throw any slur on the Germans in this country," he said. "There are Germans who are loyal to the land of their adoption, and there are Germans who can sing the 'Hymn of Hate.'"

"You saw the swank officer with his spats and glasses," he continued, referring to Zirzow, "and who took prizes at the war school, from which my learned friend says he emerged a lunatic. He was not considered such at one time, when he visited the Nerlich home, was introduced as Mr. Lieutenant Zirzow, and heard the Iron Cross discussed. This was the man who was going to New York to get a job sweeping floors."

After Zirzow had paid all his debts and purchased his ticket to New York he had \$17 left, the Crown counsel stated. That was important because it had been said that Zirzow had not been able to buy his meals here. He had received \$20 from the German Relief Fund, a Red Cross Society.

"If the Red Cross had knowledge that this man was going back to fight, they will answer for it, no matter how important they are, and no matter how much they think they have made themselves safe. We want people to understand that there is not one rule for the rich and another for the poor. We are not quite Germanized yet. There is too much of this idea that this and that can be done and nobody held responsible, and if men are being sent back to Germany in the guise of the Red Cross somebody will answer for it.

Iron Cross For Nerlich.

"I venture to say that we have here one of the most skillful and most clever plans for sending out communications with information from this country to Germany that was ever devised. No wonder they have my very learned friends here to cover up their tracks. I am here to show that every bit of evidence points to treason, points to treachery again this country. One of them asks: Is Emil coming to Germany in the spring, or is he coming now? They are waiting for him to get the Iron Cross for all he has done. He deserves it. No man has taken greater risks. He knew it was wrong. Why didn't they send their letters in the regular way? It is for you to answer. Is there a man among you jurymen who doubts which side the accused is on? A stronger case has never been put forward where the evidence is unchallenged and unexplained. He is fortunate in being tried before you instead of a military court."