

JURY MUST DECIDE FATE OF NERLICH

Judge Refuses Request That Case be Dropped—Crown Prosecutor's Stinging Address—Nerlich Testifies in Own Defence

The trial of Emil Nerlich, the Toronto German wholesale novelty dealer, charged with high treason, which has been occupying the attention of Mr. Justice Suthorland in the Criminal Assizes for the past two days, is drawing to a close. Following the close of the Crown's case yesterday, Mr. I. F. Hellmuth, the defence counsel, urged that the case be withdrawn from the jury and the accused given his freedom on the ground that the Crown had failed to prove that Nerlich had traitterously and maliciously assisted a public enemy at war with the allied nations. After consulting judgments in numerous cases cited by the defence counsel in support of his contention, his Lordship refused to assume the responsibility of taking the case from the jury. At the close of the case for the defence Mr. Hellmuth and Crown Prosecutor Mikel, K.C., addressed the jury. Mr. Justice Suthorland will charge the jury this morning.

At the outset Mr. Hellmuth vigorously objected to the case being given to the jury, claiming that the Crown could not succeed unless they showed that the public enemy was actually assisted in the war by the overact charged. He declared there was a marked distinction between the Canadian and English criminal codes under the section upon which the charge was preferred, showing that under the English code adherence to the enemy was treason, and vice-versa under the Canadian criminal code. There was no evidence of intent.

What is Assisting?

"If they had sent a Maxim gun, would that not have been of use to the enemy?" suggested his Lordship. "Supposing the accused had sent £1,000 to a soldier in Germany to be used for the soldiers, but which was left in the bank, is not that assisting?"

Mr. Hellmuth proceeded to argue that when Zirzow obtained an exeat to go to New York it was under false pretences, he (Zirzow) having deceived Judge Coatsworth and those who recommended him, the recommendations being made upon a declaration that he was going to the United States to search for employment.

Defence Plea Fails.

When court resumed after the noon adjournment his Lordship gave a ruling on the motion of the defence counsel. "As to the meaning of the word 'assisting,'" said Mr. Justice Suthorland, "it seems to me that, on the contrary, the meaning of the word is anything done which might be carried into effect, carried to its natural and intended result, and resulted in giving real assistance to the public enemy, is what is meant, and therefore I decline to withdraw the case from the jury."

Nerlich Testifies in His Own Behalf

"In that case then I will ask for a reserve case," replied Mr. Hellmuth. His Lordship replied that the application would be given due consideration.

Emile Nerlich, testifying on his own behalf, declared the whole story of Zirzow was designed to do him personal injury. He said he had lived in Canada for over a quarter of a century, his father was a British subject and he (Nerlich) had in his possession a Canadian passport issued by the Secretary of State at Ottawa. He had been brought into contact with Zirzow through the Toronto German Relief Society. The accused refuted the assertion of Zirzow to the police that he had informed Nerlich in his office that his one great desire was to get back to Germany to fight for the fatherland; in fact he had no recollection of having ever discussed the war issue with Zirzow.

What Zirzow Wanted.

His impression was that Zirzow wanted him to use his influence in obtaining a position for him. On his first visit to his office, Nerlich said, Zirzow told him he had had nothing to eat for two days and he bought him a 50-cent lunch at the Prince George Hotel. Nerlich admitted to Mr. Hellmuth that Zirzow had shown him a letter from a sister in Germany; he had glanced through it and advised Zirzow to take his sister's advice and remain in Canada until the close of the war. Zirzow had shown him the exeat obtained from Judge Coatsworth, but he did not advise him to go to New York or remain in Toronto. "Did Zirzow bother you a great deal?" asked Mr. Hellmuth.

Zirzow a "Nuisance."

"He became a perfect nuisance," answered Nerlich. "He insisted upon telephoning my home. He visited my home on two or three occasions and dined with the family."

At this juncture Nerlich explained the conditions under which he agreed to settle some debts which Zirzow had contracted with three or four friends while out of employment. He denied having informed Zirzow over the telephone that he should not call at the house because he (Nerlich) was under police surveillance.

Relief Work For Germans.

Cross-examined by County Crown Attorney Greer, Nerlich admitted that the Toronto German Relief Society, in connection with the Deutscher Verein Club, Isabella street, had been rendering relief to Germans and Austrians since the outbreak of the European crisis.

"Previous to the war the society did not give relief to Russians?" suggested Mr. Greer.—"Not to my knowledge."

"Would it be possible for a poor Russian to obtain relief from the society?"—"It would depend upon his general appearance and character. The Austrians accommodated were German-speaking."

Crown Attorney Greer then asked Nerlich to glance over some letters which had been forwarded from Germany to Mrs. Nerlich by Mrs. Hinton, whose husband, a reservist, fled from Toronto to join the German forces a few weeks before war was declared. Nerlich declared he had never seen the letters. Mr. Hellmuth's objection to these letters being introduced

by the Crown was sustained by the court.

In conclusion, Mr. Greer asked Nerlich what caused him to think the police were watching his house. He replied that a man on a bicycle had followed his motor car to the house. The rider looked like an amateur detective.

Mr. Hellmuth's Appeal.

Mr. Hellmuth, in a lengthy address to the jury, expressed the belief that they would reach their conclusion upon the basis of British fair play and justice. He reviewed the interesting features of the case and explained in most pronounced fashion the efforts of the chief Crown witness to deceive not only the accused but others who had befriended him. Mr. Hellmuth elaborated upon the fact that the Crown had failed to show that Nerlich had any knowledge of the intentions of Zirzow to get back to Germany to fight for the fatherland. The defence counsel said it was a trying ordeal for him and the associate counsel to have to defend a charge of this character in a time of war, but he believed that Nerlich was sincere in his statements concerning the whole affair and was innocent of wrong-doing.

Crown Prosecutor Makes Stinging Speech

In a stinging arraignment of the strange actions of the accused all through his connection with Zirzow, Crown Prosecutor Mikel, K.C., urged upon the jury the necessity of considering whether or not Nerlich had resorted to such measures in order to keep Zirzow under observation until an opportunity permitted him to flee from Canada.

"Zirzow was a stranger to Nerlich," declared Mr. Mikel. "He brought Zirzow to his home and treated him as one of the family. There is certainly no indication by his (Nerlich's) own statement in the witness-box that he accorded similar treatment to other applicants for relief. Another remarkable feature is that he confided sufficiently in Zirzow to inform him that he (Nerlich) was being watched by the police, but made no mention of it to his own brother."

"While Zirzow might be a capable military officer, yet he posed as a laboring man. My impression is that he belonged to a higher sphere, and was loitering around until he could make his escape to Germany for the purpose of taking up the cudgels of war against the allied forces."

Defence Makes Protest.

Interrupting, Mr. Hellmuth declared Mr. Mikel was exceeding his jurisdiction when he urged the jury to form a conclusion upon the basis that Nerlich was recognized as the head of an organization fostering German officers until such time as they could get back to Germany. Mr. Hellmuth contended it was unfair to the accused to make an accusation of that kind, but his Lordship made no ruling.

Awaiting His Chance.

"I again repeat," said Mr. Mikel, "the fact that Zirzow was being kept around with nothing to do until an opportunity permitted him to be sent to a place where he would be of a greater usefulness against the King of England. What reasonable excuse do you think the accused could give for paying for dancing lessons for Zirzow unless it would be to sit him to enjoy the pleasure of high society when he returned to Germany."