

INTENT OF NERLICH IS

CRUX OF WHOLE CASE

Mr. Justice Sutherland Gives Case to the Jury After a Two Hours' Summing Up—Points Out Evidence Which is to be Considered

Mr. Justice Sutherland began his summing up of the evidence in the treason trial against Emil Nerlich in the Assizes at ten o'clock to-day by saying that it was a rather rare occurrence for a court to have to deal with a trial on a charge of treason.

His Lordship then proceeded to explain the difference between civil and criminal cases—the former between individuals and the latter between the subject and the State. The State could not punish for offences against its laws unless it could show that the accused had a guilty mind—that is, that there must be evidence of guilty intent.

The evidence must be so clear, cogent, convincing as to place the guilt of the accused beyond any reasonable doubt. On the other hand, the jury must not raise up doubts in their minds to relieve them of the responsibility of giving a verdict.

Their verdict also must be on the evidence as produced in the case, and not upon prejudices or extraneous ideas. It was the pride of British courts that the alien got unbiased judgment there.

Passions and prejudices were naturally, legitimately, inevitably aroused by such a war as the present. There was a place for such feelings, but not in court where they might improperly sway the minds of judge and jury.

Not Sentiment of Community.

"It has been suggested by Counsel that you represent the sentiment of the community. I wish to direct you that such is not my view of what you are here for. Public sentiment is based upon newspaper talk, discussion among friends and so on. That is not evidence here.

"It was also suggested that the accused as a member of a committee to assist by giving work and financial assistance to alien enemies was in the position where he was looked to as being in a general way an enemy of the King. It would be unsafe for you to go as far as that."

As all within the borders of the Empire, citizens or aliens enjoyed the protection afforded by his Majesty's Government they all were held responsible for loyal observance of the laws of that state.

The Criminal Code laid it down as an offence to assist "in any way" a public enemy of the King for instance by giving food, horses, guns large or small, to an enemy of the King. The man, Emil Nerlich, was accused in this trial of giving money to aid a trained officer to get back to Germany to fight. No greater assistance could be given than by enabling a well trained officer to get back to the army.

Made No Difference.

As for the meaning of the term "assisting," his Lordship again defined the term in the code as meaning an overt act which consummated would have assisted. That the overt act charged in this case—the giving of \$10 to Zirzow to get to New York—was frustrated by the arrest of Zirzow made no difference in the indictment.

"The mere fact of Nerlich giving \$10 to Zirzow to pay his debts to enable him to get to New York to get work does not bring him within the scope of the section of the code."

His Lordship charged the jury that a man must not be convicted on the evidence of one witness uncorroborated by the testimony of other witnesses.

In this case Zirzow was to be considered practically as an accomplice. His evidence therefore was to be scrutinized with the greatest care.

Zirzow's statement that he had informed Nerlich at their first meeting that he wanted to go to Germany to fight was unsupported by any other evidence. There was no one else present at the time, they must therefore accept that statement on which the Crown build its suggestion of crime with the greatest care. It was very unsafe as a rule to place sole reliance on the evidence of an accomplice.

Zirzow had evidently intended to go to Germany to fight, whatever he might have told members of the German Relief Committee and Mr. Nerlich.

The defence argued that as Zirzow had an exeat or permission issued by the proper authorities to go to New York, Nerlich had a perfect right to give him assistance to do so.

Some Discrepancy.

After reviewing Zirzow's evidence minutely, his Lordship said, "I could not but be struck with the statement made by this witness, that everybody in Germany learned English and French. This may have been a little boastful, but I noticed when he was translating the letter from his sister he made use of words and phrases which could only be used by a man of considerable intelligence, accuracy and education. These facts should be taken into consideration, especially with regard to his saying he did not know he was sworn in the Police Court, though he had held and kissed the Bible."

The statements signed by Zirzow, according to his evidence, under pressure, were not evidence against the accused, as Nerlich was not present when they were made. Neither were these statements under oath,

which was the only sort of evidence which must be relied on by the jury.

"The great and important question for you to consider is What was the intention in the mind of the accused when he gave the money to Zirzow?" said his Lordship in concluding his revision of Zirzow's testimony.

Chief of Detectives Kennedy had corroborated the giving of the \$10 to Zirzow by testifying that Nerlich, when arrested, had stated such to be the fact.

"You are the judges of credibility of the witnesses. Nerlich flatly contradicts Zirzow's statement that he told him (Nerlich) that he wanted to go to fight. You saw Zirzow in the box; you heard his inconsistent and inaccurate statements. You saw the accused in the box under the burden of a serious charge. You saw his demeanor. It is open to you to disbelieve either and believe the other. You are the sole judges of fact," said his Lordship in revising Nerlich's evidence.

Matter of Intent.

"He may have had some sympathy, much sympathy, with the German Emperor and his cause. He may not.

"Unless you can show that he had such sympathy as to make him aid the German Emperor against the British Empire—as to make him give \$10 to a retired officer of Germany to get back to fight against the British Empire—you must not, convict him of treason. You must first find that the overt act—that of giving \$10 to Zirzow—had the traitorous intent behind it.

"I have endeavored to put before you calmly and dispassionately, as I warned you at the outset, the arguments of the Crown and the defence.

"I want very specially to call your attention again, as I have done before, to the question of intent. If you find that the accused gave Zirzow \$10 to aid the Emperor of Germany, you must do your duty and find him guilty. If, on the other hand, you find that the accused gave this man the money, merely to pay off his debts, then it will be your duty to bring in a verdict of not guilty.

"Something has been said in the argument regarding the penalty. It is not the duty of the jury to consider the penalty. Neither must a judge allow the seriousness of the results of his decision to make him give a decision otherwise than he would in a less serious case. It will be a sad day when the jury allows itself to be influenced by the result of its verdict."

At five minutes to twelve his Lordship closed his address, which had started at five minutes past ten. The jury then retired.

Jury Recalled.

After argument the jury was recalled by Mr. Justice Sutherland who informed them that, consequent upon the argument, the statements signed by Zirzow and later repudiated by him, would not be sent in to the jury room. They were to consider them merely as they had been brought out in evidence and not as affecting the guilt or innocence of the accused, but only in so far as they affected the credibility of Zirzow as a witness.

The question of traversing to the next sitting of the Assizes, the other charges against Nerlich—those of giving information to the enemy and trading with him contrary to the Criminal Code, was discussed, but no decision was reached before the court adjourned until 2 o'clock.

Received Rejoinder From United States



GOTTLIEB von JAGOW.

Ambassador Gerard has probably already delivered the second American note to the German Minister of Foreign Affairs, Von Jagow, who will deliver it at once to the Imperial Chancellor, Bethmann Hollweg.