

HABEAS CORPUS VS. MILITARY LAW

Interesting Conflict of Systems in Effort to Free Interned Austrian

For the first time since the establishment of the Enemy Alien Offices here under Major Date as Provost Marshal, nearly a year ago, a conflict between the civil and military authorities has arisen over an Austrian who was recently interned. This was precipitated by Mr. Brodeur, of the law firm of Berard, Brodeur & Calder, who has taken out a writ of habeas corpus calling upon the Provost Marshal to show cause why he should hold the person of an Austrian named Melne Gusctie. This raises the question as to whether civil law applies in such a case, and is likely to lead to considerable fine-spun precedent, both military and civil, before it is decided.

No information is given as to who is so anxious to get this enemy alien out of the detention prison, nor why Messrs. Berard, Brodeur & Calder are taking such action. This will, however, probably come out when the preliminary hearing is held, which has been adjourned until August 11th.

The motion for a writ of habeas corpus will be opposed by the Provost Marshal, and Major Date has retained E. Fabre Surveyer, K.C., to act for his department. Mr. Surveyer stated that, in his opinion, in such a case, with action for internment of an enemy alien taken during war time, civil law did not apply, and therefore a writ of habeas corpus could not be issued, or, if issued, could not be effective. This is the ground that will be taken in opposing the motion, and it will probably give thought to the presiding judge, since the civil magistrates are always very jealous to preserve the civil law from encroachments by the military.

It was stated yesterday that the enemy alien in the case, Melne Gustie, was also known as Michai Gusctie. Major Date said that numerous complaints had been sent in to the Registrar of Alien Enemies as to this man, and his case was investigated, with the result that on July 26th he was taken into custody by the Provost Marshal and interned. He is still at the detention prison on St. Antoine street, with a dozen or so other Germans and Austrians, awaiting transportation to Spirit Lake, unless it should be decided that the habeas corpus proceedings hold good in the case of military proceedings against enemy aliens.