

# NO TRAITOROUS INTENT WHEN NERLICH GAVE AID

Counsel for Emil Nerlich Says  
Evidence Did Not Warrant  
Conviction for Conspiracy.

## GERMAN GIVEN \$10

But Nerlich Not Actuated by  
Treasonable Motives—Ar-  
gument on Stated Case.

"There is no evidence on which the accused could have been convicted," argued I. F. Hellmuth, K.C., before the First Divisional Court to-day, when argument was heard on the stated case granted to Emil Nerlich by the trial judge, Sir William Mulock.

Mr. Nerlich was found guilty on a charge of conspiring to commit an indictable offence.

Mr. Hellmuth argued that if any offence had been indicated by the evidence, it had been treason, but not conspiracy.

Associated with Mr. Hellmuth to-day were George F. Shepley, K.C., and G. W. Mason.

The Crown was represented by J. R. Cartwright, K.C., E. E. A. DuVernet, K.C., and Edward Bayly, K.C.

Mr. Hellmuth told the story of Arthur Zirzow, who was arrested on the assumption that he was about to leave the country.

"Zirzow came to Canada in May, before the war," said Mr. Hellmuth. "He went to Nerlich, and asked for work. Nerlich could not give him work, but he found a menial job, sweeping out an office. Nerlich and his wife allowed Zirzow to come to their house for meals, as he was actually hungry. Zirzow was a man of good family. His father was a retired major. Zirzow had been a lieutenant in the German army, but was now discharged, and there was no obligation upon Zirzow to go back."

Zirzow dined with Nerlich at the Prince George on one occasion, and there showed Nerlich a letter from a sister. The sister regretted that Zirzow was now a prisoner of war, and that he had neglected the opportunity to return home. After the war, the sister thought, it would be better for him to go to the United States. He might obtain a position there, as he had learned shorthand and typewriting. Zirzow said that Nerlich approved of the sister's advice, "You stay here."

### Why Was Zirzow Surprised?

"Is there any doubt that he wanted to go to the United States to go back to Germany?" asked Sir Wm. Meredith.

Zirzow had registered as an alien; there were two kinds of war prisoners, one interned and the other under surveillance.

"He wasn't a prisoner of war," observed the chief justice.

Sir William Meredith referred to the sister's letter "How mother would love to hear of your fighting."

"Why," commented Sir William, "the sister is giving the man all encouragement to fight."

Zirzow obtained his exeat, and then saw Nerlich, who was surprised.

"Why?" asked Mr. Justice Hodgins.

"Surprise that the judge or registrar should have given the exeat?" suggested Mr. Justice Maclaren.

Nerlich gave a waiter at Krausmann's \$10 to give to Zirzow to pay some of the latter's debts. Zirzow had \$18 and a railway ticket for New York in his possession.

"Didn't the jury think that the real purpose was to get the man away to join the army?" Mr. Hellmuth was asked.

"There was no right to think so except in the event of traitorous intent," replied Mr. Hellmuth. "It was necessary to show Nerlich believed that Zirzow was going to New York to join the army."

The court devoted attention to the sister's letter.

"You are a prisoner of war, but, if you get to New York, come back to Germany, isn't that what the sister suggested?" asked Mr. Justice Magee.

"If Zirzow had been in Buffalo, wouldn't the sister have said: 'Come home at once?'" queried the Chief Justice.

Mr. Hellmuth submitted this version: "What the letter said was: 'You missed a great majority; why didn't you come back at the beginning of the war?'"

### Certificate Said Weak-minded.

Zirzow's certificate represented him as somewhat weak-minded.

"Is that the kind of material they want for majors in Germany?" asked Sir William Meredith.

"He was a lieutenant; his father was the major," the Chief Justice was told.

### What Indictment Was.

Mr. Hellmuth was still on his feet at the luncheon hour.

To-day's Appellate Court was composed of Chief Justice Sir William Meredith, and Justices Garrow, Maclaren, Magee, and Hodgins. The charge on which Nerlich was convicted and Mrs. Nerlich was acquitted, was of conspiring to aid an enemy of the King, by inciting and assisting one, Arthur Zirzow, a German subject, to leave Canada.

Zirzow did not go to the States, as he was arrested at the station here.