

# FLANK MOVEMENT, SAYS MR. DU VERNET

## Former Prosecuting Counsel Defends Conduct of Case

### HAD BEEN NO CHALLENGE

### Jury Had Been Warned to Deal Fairly With Case

In the proceedings against Emil Nerlich at Osgoode Hall which were concluded yesterday before the 1st Divisional Court. Mr. Du Vernet, who conducted the prosecution at the trial of Mr. Nerlich, delivered his argument, and was followed by Mr. Hellmuth, counsel for the defendant. The court reserved judgment.

Mr. Du Vernet for the Crown, followed Mr. Cartwright, counsel for Emile Nerlich, in the reserve case, immediately after the opening of the Court in the afternoon. He made a vigorous defence of his conduct of the case at the trial when he had acted as Crown Counsel. He said that during the progress of the trial no challenge had ever been made by the defence. It was a fact, too, he said; that the only German-American on the panel was a member of the jury which tried Nerlich. The course now taken by the counsel for the accused was an unusual one from the point of view of serving the ends of justice. It was a flank movement against the officers of the law and counsel of the crown. They had gone to all lengths, too, at the trial to secure the acquittal of the accused. They had taken down the addresses of counsel in contemplation of other proceedings should they find them necessary.

Mr. Du Vernet denied that there was any attempt to introduce inadmissible evidence. Again and again the jury was warned to deal fairly with the defence, and deal only on the evidence. The whole case was, of course, an unusual one. It was one in which the honor, and perhaps the safety of the King and the security of the country were involved. Under the circumstances it became necessary for the Crown counsel to explain what war meant and to illustrate it to the jury. To talk about inoffensive matter in the address is absurd. The defence cannot bring anything to show that there was any unfairness. "I had a right," Mr. Du Vernet said, "to illustrate my points by the use of what was common knowledge. I resent and have the utmost contempt for these attacks."

Chief Justice Meredith—"You are making an inflammatory speech now."

Mr. Du Vernet—"I have a right to defend myself when attacked."

The Chief Justice—"No! No!"

#### Lesser of Two.

Mr. Du Vernet then took up the question why the conspiracy case had been taken first instead of that of treason. The case taken up was the lesser of the two and the choice made was consideration for the accused. This was usual when two charges lay against an accused. Mr. Du Vernet cited a case in which a charge of manslaughter had been tried against a Christian Scientist instead of a graver one of murder.

Mr. Du Vernet said he was not objecting in any way to the present proceedings. He quite recognized the right of the counsel of the accused to take every objection, to lay every trap, in the interests of their client. Mr. Du Vernet then referred to particular statements made in evidence to show that there could be no doubt Nerlich not only knew Zirzow's intentions, but encouraged him in seeking to carry them into effect. Nerlich had kept telling Zirzow how Van Houten had got back to Germany and had won the iron cross. All this was undoubtedly intended as an encouragement to Zirzow. Then those meetings at the Prince George Hotel, at the German Club and at his (Nerlich's) house—was it not clear that at these meetings this man Zirzow who had won military prizes, was being encouraged to go back to Germany and fight. Mr. Du Vernet referred to Mrs. Nerlich's request that Zirzow should write to her from the trenches as showing the terms they were on and the complete understanding as to Zirzow's future course.