

IRRELEVANT WHETHER

ZIRZOW "INFLUENCED"

Court Refuses to Allow Detective to Contradict Evidence of German Lieutenant.

LETTERS BARRED NOW

Mrs. Nerlich's Private Correspondence May Be Admitted Later If Necessary.

When the trial of Emil Nerlich charged with committing high treason, was resumed before Mr. Justice Sutherland and a jury in the Criminal Assize Court his Lordship refused the Crown's application that Detective Maurer be allowed to take the stand and refute Lieut. Zirzow's statement that he had been "influenced" in his written statement by Maurer.

The court also refused to allow, for the present, letters written to Mrs. Nerlich from Zirzow's relatives to be used as evidence against Mr. Nerlich. His Lordship admitted that if later during the trial it was in the interests of justice the letters could be used.

"I will hold myself open," said Justice Sutherland.

When Mr. Nerlich entered the prisoner's dock he wore a Queen Alexandra Hospital rose tag.

"I think Zirzow is an adverse witness, and should be treated as an adverse witness," began the Crown Prosecutor, in asking that Detective Maurer be allowed to show that he had not intimidated Zirzow.

His Lordship replied that the Crown had received all the benefit from Zirzow's statement. It was totally irrelevant whether Zirzow had been induced or coerced.

The paragraph the Crown wanted to use was contained in a letter addressed from relatives of Zirzow to Mrs. Nerlich. It was dated November 2, 1914, and read, in part: "It is a great pity that we cannot get all our young people from the foreign lands. Many able-bodied young men should be here."

"This," argued Mr. Mikel, "is an appeal to do all possible to send the young men in foreign lands home. This document was treasured in the home of the accused for weeks, and perhaps months."

"The question is whether a document found in the possession of the wife of the accused, found in her room, is admissible against her husband," said his Lordship.

Did Wife Communicate Contents?

"Certainly those letters were found in Mrs. Nerlich's possession," replied Mr. Hellmuth. "It must be shown that the wife communicated the contents of the letter to her husband. Surely I would not have the right to go into my wife's room and read her private letters. If my son is an absolute traitor I have no right to read his letters. Nothing in that letter has been said about sending men from Canada to Germany."

Justice Sutherland: "When a document is found in a man's house it is possible that some explanation may be made how it came into his possession. This is a very pertinent question."

Detective Maurer was called to the stand for a short time. He identified a letter that had been written to Zirzow from Germany, and which had been partially translated by Zirzow yesterday. When the witness attempted to give his translation, Mr. Hellmuth immediately objected. His Lordship replied: "It seems a pity that since yesterday the experienced counsel have not made some arrangement to have the letter translated. Now we are just where we were yesterday. I do not think it is treating the court or jury fairly."

Mr. Hellmuth replied that Prof. Jourig's translation would be acceptable.

Inspector of Detectives Kennedy was the next witness called. He recalled the arrest of Mr. Nerlich at the City Hall.

"I asked him if he had known Zirzow," said the witness. "He said 'I do.' I asked him if he had given him any money. He said 'Not directly.' I asked him if he had given any money indirectly. He said, 'I gave \$10 to Keinz, a waiter at Krausman's Hotel.'"

Mr. Hellmuth's cross-examination was spirited. In reply to his questions, Kennedy said that Nerlich's answer, "I gave Keinz \$10 to pay Zirzow's debts," given by the witness at the last trial, was correct.

Not Looking Hard For Nerlich.

"Did you know that on Thursday, Friday, and Saturday, although you were looking for him, Mr. Nerlich was in his office?" asked Mr. Hellmuth. "No," replied Kennedy.

"You know now?" "Just from hearsay."

"You were not looking for him very hard?" "No, not very."

"You are the gentleman who gave the information to the newspapers that Mr. Nerlich had practically absconded and left the country?" "I did not give Mr. Nerlich's name to the newspaper reporters."

Several replies of this nature brought from Mr. Hellmuth the retort: "Now, Mr. Kennedy, you have been in court before and you know that you cannot trifle with me."

"I told you that I did not give his name to the newspapers," answered the detective.

"What interest have you got in this case?" "I have no interest in this case except as a police officer doing my duty."

Referring again to his conversation with the reporters Mr. Hellmuth asked: "Did you tell them that Mr. Nerlich had left hurriedly?" "I may have. I did not mention his name."

"You knew the reporters were asking you about Mr. Nerlich?" "I understood they were asking me in reference to Mr. Nerlich."

"But when you said he left hurriedly you meant Mr. Nerlich?" "I did not mention his name—"

Mr. Hellmuth: "Don't repeat that. Can't you answer 'yes' or 'no'? The police officers do not seem to be built that way."

When Mr. Hellmuth had finished the cross-examination, Mr. Mikel stated that arrangements had been made with the University of Toronto professors for a translation of Zir-

zow's letter, and that this would conclude the case for the Crown.

"I submit that there is no evidence to submit to the jury," began Mr. Hellmuth in arguing that there was not enough evidence to place the case in the jury's hands.

In the first place, declared the lawyer, the Crown had to prove that Nerlich assisted a public enemy at war with His Majesty to leave the country. This had not been done. Actual assisting the enemy must be shown and not trying to assist. This was not enough to prove treason. His Lordship then wanted to know if Zirzow had been able to reach Germany and had not been used in the army; would it then be treason on Nerlich's part? Mr. Hellmuth replied that this case was different from the one mentioned by the court. In Canada, continued Mr. Hellmuth, adherence to the enemy was not treason. It must be necessary to show that there was some intent on the part of Mr. Nerlich to send the prisoner back to Germany. "I submit that the Crown has completely failed in its case," finished the lawyer.

Crown Prosecutor Mikel in reply said that the Canada Treason Act was very wide in its meaning. Treason according to the statute meant assisting the enemy by any means whatsoever. "Why do we find a busy man elaborating on the history of this man?" he argued. "Zirzow got \$20 from Mr. Peters and \$10 from the accused. That is a part of the corroboration. The accused tells Zirzow that he is being watched by the police. Inspector Kennedy corroborates this by stating that the police watched Nerlich for about a month."

Says Zirzow Deceived Both.

Mr. Hellmuth continued his argument. Unless it was shown that there was intent upon the part of Nerlich to assist Zirzow to leave the country, Judge Coatsworth, who granted the exeat, and Rev. Mr. Hoffman, who recommended this, could be indicted on the charge of treason. Zirzow had deceived them both. He told them he wanted to leave the country to get employment in the United States. This story was told to Mr. Nerlich, and Zirzow was given \$10, with which to pay his debts.

"Has a \$10 payment to a German officer, who wishes to go back to Germany, no guilty significance?" queried his Lordship. Replying for the defence, Mr. George Shepley said he did not think it had.

Justice Sutherland at this point adjourned the court to consider the judgment.