

EMIL NERLICH'S FATE NOW RESTS IN JURY'S HANDS

Jury Retired at Noon, But Was
Recalled for Further
Instructions.

MUST NOT READ LETTERS OF ZIRZOW

After a trial of two days the fate of Emil Nerlich, charged with committing high treason, is now in the hands of the jury. With the evidence all placed before them, Mr. Justice Sutherland, in the Criminal Assize Court, commenced his charge to the jury at 10 o'clock. It was rather a rare occurrence, he said, for a judge to be called upon to address a jury in a treason trial. In this and all other cases a person could not be punished for a crime unless it was shown that the person accused had a criminal motive or there was intent in his mind.

"The evidence must be clear, potent, and convincing beyond a reasonable doubt before one can be found guilty. If a juror believed the accused guilty he must not conjure up in his mind some doubt that did not exist, but was raised up really to allow the juror to shirk his duty. The verdict must be arrived at from the evidence and documents before them. They must not allow prejudice to influence their opinion. The alien in Canada will be treated with the same justice as a native-born Canadian.

This is a direction that would be given at any time, but more stress must be laid on it now when national and patriotic feeling has been aroused. Even prejudice was natural, it was to be expected. The jury was to be calm and not to allow any extraneous matter to influence their verdict.

It had been suggested by the counsel in their arguments that the jury "represented the sentiment of the community." His Lordship wished to charge the jury that he did not believe this to be the case. The sentiment of the community is gathered from newspaper talk, association with friends, and in other ways.

"That sentiment," declared the court, "is not based upon the evidence you have heard here."

"Assisting" Has Many Meanings.

It had also been suggested that the accused was looked upon as a member of the relief committee and one of the leaders in that committee. It would be unsafe to impute the assertion that because the accused was a member of that committee he was assisting the enemy in a general way.

The section under which the indictment was laid was a very general one. It included "assisting in any way whatsoever." The word "assisting" had many meanings. In this case the Crown had said that the accused had assisted Zirzow by giving him money.

"No greater assistance could be given the enemy than to supply him with a well-trained officer," declared the court. "I charge you that if such assistance or intended assistance, even though it did not result in the object sought, nevertheless the design is there, the overt act has been done, to bring the accused within the scope of the Treason Act. I must also charge you that if the accused gave the money to Zirzow to pay his debts, and to go to New York in search of work, and that this was his real object, it does not bring him within the scope of the law."

Zirzow An Accomplice.

Zirzow should be treated as an accomplice of the accused, and his evidence should be carefully scrutinized. In pointing out that it would be unsafe to convict on the unsupported testimony of the accused, his Lordship said: "You must with great care accept the statement made under oath by the accomplice. Whatever Zirzow said to anybody it was his real intention to go back to Germany. His statement that he was going to New York to look for work was only a subterfuge.

"I was struck by Zirzow's answer to the question how he learned to speak English that 'All Germans learn French and English.' When he was translating this letter the use of his words and phrases seem to indicate that he was a man of convincing intelligence, accomplishments, and education."

His Lordship directed that although Zirzow had made a statement in the Police Court and later denied it, the jury was open to believe it if they saw fit. He thought that the man's demeanor in the witness box showed that he had become an adverse witness.

What Was Accused's Intention?

The most important circumstance was: What was the intention of the accused when he gave Keinz the \$10. Nerlich distinctly and definitely contradicted Zirzow's statement that he told Nerlich he was going back to Germany to fight. The jury had

seen both men in the box and they could believe who they saw, fit.

"It may have been that a man in the position of the accused would be drawn by mixed feelings," said his Lordship. "He would have sympathy for the country of his birth. He may have had much or little or some sympathy for the German Emperor. He may not have. Unless you can show that his sympathy and desire was followed up by giving a German officer in Canada \$10 to get back to Germany to assist the Kaiser against our King you cannot find him guilty."

"Did Zirzow communicate his intention to Nerlich that he intended to go back to fight? The Crown says he did."

The Crown had alleged that Nerlich was a well-known man and had a large business. "The accused must be treated the same as anybody else and any other man. He must not be shown undue consideration."

"I have endeavored to put forth both views calmly and dispassionately. The jury is not to consider the penalty. The duty of the jury is to decide the main facts without consideration of what the future consequences are. You must not allow any feeling against the Germans to influence you."

The jury retired at 11.55.

The jury was recalled and told by

His Lordship that they would not be allowed to read the statements made by Zirzow. This course followed Mr. Hellmuth's objection, which was made as soon as His Lordship had finished his charge. The court adjourned until 2 o'clock.