

NERLICH NOT GUILTY: COLLAPSES IN COURT

Dramatic Scene When He Failed to Comprehend

RESTORED TO FAVOR

Asked If He Might Shake Hands With Crown Prosecutor—Justice Sutherland Appeals for Fair Play for Aliens in Canada.

Without offering comment upon the verdict of a jury returned after a deliberation of six hours, Mr. Justice Sutherland last night in the Criminal Assizes informed Emil Nerlich, a wealthy German wholesale novelty dealer, charged with high treason, that he was at liberty to again mingle with the public. Strange to say, Nerlich could scarcely realize that he had been granted his freedom. When the foreman announced the decision of the jury, Mr. W. G. Mason, Nerlich's solicitor and an associate counsel during the trial, which lasted for three days, grasped the hand of the accused, who had failed to detect the utterance of the foreman and lapsed into a semi-conscious condition. The accused was under the impression that a verdict of "guilty" had been found against him.

"Give me a mouthful of water," gasped the accused.

For a moment he keeled over, but prevented himself from falling to the floor by grasping the railing of the prisoner's dock. Upon recovering himself his eyes filled with tears, and, acting as though bewildered, the accused gazed at the Court Clerk as the latter turned to the jury and said: "Harken unto your verdict, you say Emil Nerlich is not guilty, so say you all."

Nerlich Recovers Himself.

This utterance brought forth a complete transformation in the life of the accused, who, upon stepping from the prisoner's dock, greeted his counsel, Mr. I. F. Hellmuth, K.C., and Mr. George F. Shepley, K.C., with a frank smile and a handshake.

"I am glad it is all over," said Nerlich to Mr. Hellmuth, who himself, in a moment of joy over the result, stood with tear-filled eyes surrounded by his associates and some friends of the accused who had been present throughout the trial. The latter were mostly colleagues of the accused man on the German Relief Committee. An attempted demonstration broke out when the verdict was announced, but subsided with such great rapidity upon the demands of the court erler that his Lordship Mr. Justice Sutherland did not deem it necessary to rebuke the offenders.

Judge on Zirzow's Offence.

Turning to the jury his Lordship said: "Before discharging you, gentlemen of the jury, I desire to call your attention to the attempt of Arthur Zirzow, a witness, while in the witness-box to destroy a document which was being used for the purpose of the trial. I think it my duty to do so. Zirzow might well have left himself open to a serious criminal charge for doing it. I might well have committed him at once for contempt of court. That was my feeling. The reason I did not resort to drastic measures was due to the fact that I stayed my hand for the sole reason of taking precaution against prejudicing the trial of the accused.

Zirzow's Disregard of Law.

"The conduct of Zirzow in the witness-box showed absolutely that officers trained for the German army have no respect for the civil rights and authorities of other countries at war with the Emperor of Germany and his country; in fact, the conduct of Zirzow, apparently a well-trained German officer, demonstrated my conclusion.

"Had this occurrence taken place in a British or Canadian court, under

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other conditions, it would not have been tolerated, and the offender would have been punished. However, I thought that I acted wisely in this case, in making no mention of the incident until after you had deliberated and rendered your decision. Gentlemen, that is all I have to say on the matter, and you are now relieved from further duty."

Disclaimer for Sergt. Lees.

"I desire to call the attention of your Lordship to a reference made to Sergt. Lees of the R.C.D. during the trial," said Crown Prosecutor W. C. Mikel, K.C. "The officer has requested me to make the statement as a protection of himself personally. There was a statement made in the witness-box by Zirzow, the chief witness and a prisoner of war, to the effect that while he was in charge of Zirzow he had done something to influence the witness Zirzow. Sergt. Lees, who was not given the opportunity of going into the witness-box to defend himself and contradict the statement, which he declares was absolutely false, fears that it will have some effect upon his standing with the military authorities. He informs me that he was prepared to make a denial, and in fairness to the officer I think a statement should be publicly made by your Lordship."

His Lordship replied that he was quite prepared to assume that Sergt. Lees and Detective Maurer, who was also accused of having influenced the witness Zirzow, would have been called to deny the statement. Other than that, his Lordship remarked that he had nothing to do with the matter.

"I think that will be quite satisfactory to Sergt. Lees," added the Crown Prosecutor.

Back in the Fold.

"I wonder if Mr. Mikel will shake my hand," asked Emil Nerlich of his counsel, Mr. Hellmuth.

Escorting his client to Mr. Mikel, who was busy gathering together his papers, Mr. Hellmuth asked him if he objected shaking hands with Nerlich.

"None whatever," responded the Crown Prosecutor, extending his hand. "It was my duty as a Crown officer to fight against you, in other words I was obliged to go after you with full force on such a serious charge. I think I fulfilled my obligations."

Other Charges Left Over.

Before leaving court Nerlich's bond for appearance at the September Criminal Assizes on two other counts in the indictment—assisting the enemy and trading with the enemy—was renewed, his brother, Henry Nerlich, a partner in the firm of Nerlich & Company, being accepted as the bondsman.

Judge Appeals for Fair Play for Aliens

In his charge to the jury, which lasted for almost two hours, Mr. Justice Sutherland, who had exercised the greatest care throughout the trial as to certain evidence and documents being used, urged them not to permit sympathy to interfere with their decision. It was their duty to not to render a verdict according to the evidence. In this and other cases the accused persons could not be punished unless it was shown conclusively that they had a criminal motive or that there was intent in the mind of the accused.

"In a serious charge such as that of treason, or, in fact, any other charge," said his Lordship, "the evidence must be clear, potent and convincing beyond a reasonable doubt before one can be found guilty. The alien in Canada should be treated with the same justice and British fair play as a native-born Canadian. While a national and patriotic feeling is prevalent as a result of the military events in Europe, when prejudice is aroused, it is your duty as jurors not to allow extraneous matter to influence you in reaching a verdict."

What Did Assistance Mean?

"The section under which the charge was laid was a very general one, and included 'assisting in any way whatever,' the word 'assisting' having many meanings. In this case the Crown contends that Nerlich assisted Zirzow, a former officer of the German army, by giving him \$10. No greater assistance could be given the enemy than to supply him with a well-trained officer. 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. On the other hand, if the accused gave Zirzow the money, as he alleges, to pay his debts and go to New York in search of work, and this was his real object, it would not bring him within the scope of the law."

Zirzow Wanted to Go Back.

Proceeding, his Lordship considered that Zirzow should be treated as an accomplice of the accused, and his evidence should be carefully scrutinized. Whatever Zirzow had said to anybody, it was evidently his intention to get back to Germany. Touching upon the unsupported evidence of the accused, it was the duty of the jury to consider with great care the statements made by Zirzow under oath. He believed that his statement that he was going to New York to look for work was only a subterfuge.

His Lordship said that he was greatly impressed by Zirzow's answer to the question how he learned to speak English. Zirzow had pointedly replied "that all Germans learn to speak English and French." This was apparent when he was asked to translate a letter.

"The use of his words and phrases," added his Lordship, "seemed to indicate that he was a man of convincing intelligence, accomplishments and education."

The charge upon which Nerlich was tried was that of high treason. A few months ago Nerlich and his wife were tried on separate charges of conspiring to commit treason. Mrs. Nerlich was acquitted. Her husband was convicted, the conviction being subsequently quashed, hence the pressing of the charge upon which he has now been found not guilty.