

APPELLATE COURT ON NERLICH CASE

Full Text of Judgment on Stated Case Handed Down

ZIRZOW WAS EXCLUDED

And His Name Not Among Those With Whom Conspiracy Was Alleged

The full finding of the Appellate Court in the case of the King against Nerlich on the charge of conspiring to commit treason, was handed down to-day. It will be remembered that on a stated case presented to the Appeal Court the finding of the trial jury against the prisoner was reversed and the action dismissed. The simple conclusion of the court was given with a promise that the reason for its finding would be presented later.

The question, the court says, turns upon the meaning to be attached to the word "others" in the only count in the indictment. By alleging that those others conspired with Emil Nerlich to aid the King's enemies by inciting Zirzow to join their forces the draughtsman excluded Zirzow, of necessity, from the conspirators, as he could not by any reasonable construction be supposed to be charged with conspiring to incite himself.

As the "others," whoever they were, are alleged to be parties to the whole conspiracy, the word "others" must mean the same persons throughout the indictment, though not necessarily throughout the evidence. Being exclusive of Zirzow, the word "others" must therefore also be exclusive of him as regards the other means of aiding the enemy.

The result, according to Mr. Justice Magee, is that there was no charge that Nerlich conspired with Zirzow, and as the evidence failed to establish conspiracy by Nerlich with anyone else, it would follow that he should have been acquitted.

In the course of his judgment, Mr. Justice MacLaren says:

Names Should be Given.

"Good faith on the part of the Crown requires that the names of all the persons known and respecting whose part in the conspiracy evidence is to be tendered, should be given in the indictment, or in the particulars as the case may be. If it had been intended to include Zirzow as one of the conspirators, his name should have been given in the indictment, as the Crown was well aware of the part he had taken in the matter that formed the basis of the prosecution, and his name appears as the first witness on the back of the indictment, and it has been initialled by the foreman of the Grand Jury as evidence of Zirzow's having been sworn before them. The name of Zirzow appears in the indictment only as a person to be incited and assisted to leave Canada and join the enemy's forces, but not as a party to the conspiracy."