

IN RE ESTATE OF FLORENTINE S. SUTRO

MEMORANDUM CONCERNING THE RIGHTS  
OF NICHOLAS ROERICH AND HELENA  
ROERICH AND SINA FOSDICK.

Florentine S. Sutro died in 1939, leaving a last will and testament, which was admitted to probate in the Surrogate's Court of New York County.

I. The \$5,000. legacy.

By article Sixth of the will, Mrs. Sutro left a legacy of \$5,000. to Nicholas Roerich and Helena Roerich, to be divided equally between them if both would be living at the death of the testatrix, or the entire amount to either of them in case of the previous death of the other.

If both of them had died, the \$5,000. would have been payable to Sina Fosdick (then Sina Lichtmann). As that contingency did not occur, Mrs. Fosdick had no interest in the legacy.

The record in the Surrogate's Court shows the following as to said \$5,000. legacy:

- A. On November 19, 1940, the share of Helena Roerich was paid to Messrs. Hall, Cunningham, Jackson and Hayward \$2,500.
- B. On October 15, 1941, the share of Nicholas Roerich was paid:
- |                                     |                   |
|-------------------------------------|-------------------|
| 1. To Collector of Internal Revenue | \$1,209.60        |
| 2. " David S. Shapiro, Receiver     | 1,280.40          |
|                                     | <u>\$2,500.00</u> |

As the payments were made several years ago, we assume that Mrs. Fosdick and Mrs. Roerich are already informed as to them and know why they were made as indicated, instead of to Mr. & Mrs. Roerich themselves. We have made no inquiry as to that.

II. The additional \$5,000. which will become payable upon the death of Florence Sutro Esberg.

By article Ninth of the will, Mrs. Sutro provided that one-half of her residuary estate (i.e. the amount remaining after payment of taxes, debts, legacies and expenses) should be divided into two equal parts. One part was given to a number of named charities. The other half was placed in trust for Mrs. Sutro's daughter, Mrs. Florence Sutro Esberg (now Anspacher), who is entitled to receive the income throughout her life and who, as one of the trustees of the trust, with U.S. Trust Co. of New York, is now rendering the present account.



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The provision with which we are concerned is the provision contained in article Ninth of the will providing for the distribution of the principal of the trust fund upon the death of the life beneficiary. That distribution will include the \$5,000. in connection with which Nicholas Roerich, Helena Roerich and Sina Lichtmann (now Sina Fosdick) are named.

The provisions in reference to the distribution of that \$5,000. are not free from ambiguity. However, they are not to be decided in the present proceeding. What is now involved is whether the trust fund, out of which this \$5,000. must ultimately be paid, has been properly administered and whether there is an assurance that upon Mrs. Anspacher's death there will be assets sufficient to pay the \$5,000.

As to the adequacy of the trust fund, it should be sufficient to state that the present account of the trustees shows that the capital of the fund now remaining after payment of the expenses (the assets being figured at market value) is \$1,954,423.70, including \$47,089.48 in cash.

In view of that condition and of the circumstance that the \$5,000. has a preferred position in the distribution upon Mrs. Anspacher's death, there seems to be no reason to be concerned about the security or sufficiency of the trust fund or its previous administration, and consequently no need to intervene in the present proceeding.

Dated: September 12, 1955

BACHRACH & BISGYER

By:  \_\_\_\_\_