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SUPREME COURT, APPELLATE DIVISION,

First Department, March, 1938.

Francis Martin, P.J.,
James O'Malley,
Alfred H. Townley,
Edward J. Glennon,
Irwin Untermyer, JJ.

Nicholas Roerich, Helena Roerich,
Maurice M. Lichtmann, Sina
Lichtmann and Frances R. Grant,
Appellants, :

vs.

5182

Louis L. Horch, Nettie S. Horch,
and Master Institute of United
Arts, Inc., Respondents. :

Appeal by the plaintiffs from a judgment of the Supreme Court,
New York County, entered on a decision dismissing the
complaint on the merits; and by the plaintiff Nicholas
Roerich from that portion of said judgment adjudging that
the defendant Louis L. Horch recover of the plaintiff
Nicholas Roerich the sum of \$210,951.96, on the counter-
claims of said defendant against said plaintiff.

Herbert Plaut, of counsel (Harold Davis with him on the
brief; Plaut & Davis, attorneys) for appellants.

Edward J. Chapran, of counsel (Jonas J. Shapiro and Harold
H. Stern with him on the brief; Greenbaum, Wolff &
Ernst, attorneys) for respondents.

Judgment affirmed with costs. No opinion. (O'Malley, J.,
dissenting; dissenting opinion by O'Malley, J.)

O'MALLEY, J. (Dissenting) :

The indisputable documentary evidence bearing on the main
issues presented was of such a character that a finding in
favor of plaintiffs was required (Duryea v. Zimmerman, 143
App.Div. 60, 68; Susquehanna Silk Mills v. Jacobson, 185 App.
Div. 378, 383; see also Bernstein v. Keitzer, 253 N.Y. 410,
416.) I, therefore, dissent and vote to reverse and grant
judgment for the plaintiffs as prayed for in the complaint and
to dismiss the counterclaim;

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Arts, Inc., Respondents.

Appeal by the plaintiffs from a judgement of the Supreme Court, New York County, entered on a decision dismissing the complaint on the merits; and by the plaintiff Nicholas Roerich from that portion of said judgement adjudging that the defendant Louis L. Horch recover of the plaintiff Nicholas Roerich the sum of \$210,951.96, on the counterclaims of of said defendant against said plaintiff.

Herbert Plaut, of counsel (Harold Davis with him on the brief; Plaut & Davis, attorneys) for appellants.

Edward J. Chapman, of counsel (Jonas J. Shapiro and Harold H. Stern with him on the brief; Greenbaum, Wolff & Ernst, attorneys) for respondents.

Judgement affirmed with costs. No opinion. (O'Malley, J., dissenting; dissenting opinion by O'Malley, J.)

O'MALLEY, J. (Dissenting):

The indisputable documentary evidence bearing on the main issues presented was of such a character that a finding in favor of plaintiffs was required (*Duryea v. Zimmerman*, 143 App. Div. 60, 68; *Susquehanna Silk Mills v. Jacobson*, 185 App. Div. 378, 383; see also *Bernstein v. Keitzer*, 253 N.Y. 410, 416.) I, therefore, dissent and vote to reverse and grant judgement for the plaintiffs as prayed for in the complaint and to dismiss the counterclaims.