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May 19, 1938.

Mrs. H. G. Campbell,  
34 Gramercy Park,  
New York, N. Y.

My dear Mrs. Campbell:

Recently Mr. Horch has taken steps which open a way for countermeasures and suggest the development of a complete line of procedure.

Some days ago Horch closed up the rooms in the building where Prof. Roerich's paintings were on exhibit and some of the paintings were taken away under the statement that they belong to Mrs. Horch. Mrs. Lichtmann and Miss Grant went to the District Attorney about it and, at a subsequent conference in the District Attorney's office attended by them and Mr. Plaut and by Mr. Shapiro, representing Mr. Horch, Mr. Shapiro said that something over 100 of the paintings had been hypothecated by Prof. Roerich to the Fifth Avenue Bank in 1922 and that when Mr. Horch paid off that lien of the bank he himself got a lien on those paintings and so they belong to him. As to 400 paintings made between 1922 and 1928, he claimed that they were Mr. Horch's property on the theory that he had purchased them outright from Prof. Roerich for approximately \$147,000 (this is the alleged purchase which furnishes the basis for the tax claim). He said that 150 other paintings which belong to Prof. Roerich have been impressed by the Government with a lien for the unpaid income taxes. Horch apparently makes no claim to these.

The balance of the paintings Horch claims were sold in

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a \$200,000 transaction or given by Prof. Roerich to the Roerich Museum; that they were covered by a mortgage and under the foreclosure proceedings were transferred to the Riverside Drive & 103rd Street Corporation, which latter corporation deeded them to the Master Institute of United Arts, Inc. Horch disclaimed that the Nicholas Roerich Paintings & Art Collection had claim to any of the paintings.

Thus, under Horch's theory, he personally or his wife claim title to some of the pictures and the Master Institute claims title to others, and the rest are covered by the lien of the Government in the tax case.

A few days ago in supplementary proceedings instituted by Mr. Horch against Mrs. Lichtmann and Miss Grant, Mr. Horch had a receiver appointed of all of those ladies' property. It is not improbable that he is planning to purchase the three shares of stock which they own in the Nicholas Roerich Paintings & Art Collection, Inc. from the receiver, any money which he would have to pay coming back to him in satisfaction of his judgment. That judgment was for costs in the litigation against the Master Institute.

Mr. Horch is the only person who has or may have possession of any documentary evidence about the title to these paintings. In his diary under date of February 15, 1932 he stated that he "went to the vault and found a document executed September 10, 1928 by Prof. Roerich (bearing the official seal and signature of R. Y. Jarvis, Consul of the U.S.A.) by which 734 paintings were deeded over to Nicholas Roerich Paintings & Art Collection, Inc."

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Miss Grant thinks that she recollects such a paper having been executed by Prof. Roerich at one time -- I think when she was with him, somewhere abroad. Perhaps Prof. Roerich may be able to tell you whether he recollects executing any such paper and, if so, what he remembers about it.

In an entry made some time later in 1932 in his diary, Mr. Horch said "A document was made out that the Nicholas Roerich Paintings & Art Collection, Inc. gives the paintings to the Roerich Museum with the proviso that they are the property of the Museum, never to be sold, always to be kept for the nation, but if at any time attempts should be made to sell the paintings they revert back to the Nicholas Roerich Paintings & Art Collection, Inc."

In correspondence which took place between Mr. Plaut and Mr. Roerich's attorney a little over a year ago, his attorneys disclaimed the ability to locate any such documents as are referred to in the diary.

If the paintings belong to the Roerich Museum, I am not at all certain they they were covered by the mortgage or transferred to the Master Institute by virtue of the foreclosure proceedings as Mr. Horch's attorneys claimed when before the District Attorney. I have not been able/ <sup>as yet</sup> to examine the files in the County Clerk's office in those proceedings to make entirely sure, but from photostatic copies of certain documents which have been furnished me, I think it is very doubtful whether they were so transferred.

It is quite possible that Horch's attorneys know that

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there is doubt on this point and that possibly, if a question should come up, it would be impossible to show that the Roerich Museum ever lost title to any of the paintings which were given to it.

It seems to me quite likely that Horch is playing a clever game so that if the question should be raised and it should be found that none of the paintings belong to the Master Institute and that 743 of them were turned over to the Roerich Museum, he will be in a position to produce the papers which his attorneys said they could not find and give proof that the paintings belong to the Nicholas Roerich Paintings & Art Collection, Inc. If that is his idea, it explains why he has had a receiver appointed in the supplementary proceedings, so that he can buy the shares of stock which belong to Miss Grant and Mrs. Lichtmann, and thus he and his wife would own all the outstanding five shares of stock of that company and prove to be the owners of all the paintings.

In view of the foregoing, the procedure which it seems to me we should pursue, and along which I have already taken certain steps, is as follows:

Both Mrs. Lichtmann and Miss Grant owe quite large sums of money to Major Stokes and Mrs. Sutro. I have had each of them confess judgments in favor of each of those parties and such judgments have been entered. On Monday, pursuant to the provisions of our statutes, I am, as representing Mrs. Sutro and Major Stokes, going to move to have the receivership which Mr. Horch secured extended to cover the judgments in favor of Major Stokes and Mrs.

Sutro. That gives Major Stokes and Mrs. Sutro the right to call upon the receiver to take certain steps to protect their interests. As soon as the receivership is so extended, I am going to request the receiver to call upon Mr. Horch to give to him a statement of the assets and liabilities and financial position of the Nicholas Roerich Paintings & Art Collection, Inc. on the ground that no sale of the shares of stock in that company can properly be made until some information is available as to what the property of the company is. If the receiver will not do that voluntarily, I shall make a motion to the court for an order directing him to. My idea in this is to make Mr. Horch commit himself definitely as to whether the Nicholas Roerich Paintings & Art Collection, Inc. has title to the property or not and, in that connection, we may be able to compel him to produce any documents which may exist bearing on the subject if we deem that course to be advisable.

If Horch does not claim that title is in the Nicholas Roerich Paintings & Art Collection, Inc., my idea is that we shall then proceed under a provision of the Education Law, by virtue of which the Board of Regents of the State of New York, which granted the charter to Roerich Museum, has the right to remove Trustees for misconduct, incompetence or neglect, and to appoint Trustees in their place. The Board can conduct hearings on charges on ten days' notice. In that proceeding, a complete examination could be had of all of Mr. Horch's transactions with reference to these paintings.

On such a proceeding Mr. Horch will be shown to be in a

dual position. As stockholder and President and Director of the Master Institute he will be claiming that the Master Institute acquired title to the paintings from the Roerich Museum through the foreclosure proceedings. Obviously, he is not competent to represent the Roerich Museum as a Trustee in defending a claim made against the Roerich Museum by another company in which he is financially interested. Our laws do not permit a Trustee to deal with himself in any such manner. As an incident to such proceedings it will be possible to put in evidence the various entries in Mr. Horch's diary made in 1932 in which he admits making changes in the books of the Roerich Museum and taking other steps in order to remove all signs of ownership on the part of the Roerich Museum.

It is, of course, wholly impossible to predict what will be the outcome of any such proceedings. In my judgment the chances that the Board of Regents would remove Mr. Horch and his wife and, possibly, his other two Trustees and appoint some Trustees in their places are very good. Whom they would appoint we cannot foresee. The Board of Regents is composed of men of the highest character, some of them eminent in the educational and some in the business world, and any trustees whom they appoint would be men who would prove to be counted on to uphold the interests of the Museum. They with Prof. Roerich's four friends in this country who are already Trustees could proceed in behalf of the Roerich Museum to claim title to all of the paintings which it may be possible to prove belong to the Roerich Museum. They could also take such other steps as may be deemed advisable to compel Mr. Horch to account

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for any of his conduct and also for his actions in putting the Roerich Museum paintings in storage.

In this latter connection I am sending you a clipping from The New York Times of about a week ago, showing what Mr. Horch is doing.

It seems that, in view of Mr. Horch's conduct, Mrs. Sutro has been in correspondence with Mr. Lazarus, attorney for the Tax Board, in the course of which she asked the Tax Board to revoke the partial tax exemption given to the Master Institute on 310 Riverside Drive. She has had a reply from Mr. Lazarus, which I have not as yet seen, which indicates that such tax exemption is going to be revoked as of the 1st of October, but that Mr. Horch is going to be given a hearing on the matter in the very near future, at which Mrs. Sutro has been asked to be present.

Inasmuch as under the present arrangement with reference to 310 Riverside Drive some \$16,000 (I think it is) is being paid by the building to the Master Institute, as representing the amount of the tax exemption, and as that payment to the Master Institute will of course cease if the exemption is withdrawn, this move is going to put Mr. Horch in a very embarrassing position.

While awaiting developments in these proceedings before the Tax Board, I am planning, if you approve, to proceed along the lines outlined above in this letter.

Very sincerely yours,

Matthew G. Smyth

NAS\*MA  
Enc.

June 22, 1938.

Mrs. H. G. Campbell,  
Aruna Hill,  
Brookfield, Conn.

Dear Mrs. Campbell:

This is to report what has been done recently in the Roerich Museum matter.

As you will recollect, our plan had been to lay the groundwork for a petition to be lodged with the Board of Regents to oust Horch and his three associates as Trustees of Roerich Museum. Before filing that petition we have desired to get Horch to commit himself one way or another as to the present ownership of Prof. Roerich's paintings which were in that Museum. In the conference which was held in the District Attorney's Office, his attorney had stated that many of those paintings had been bought by Mr. and Mrs. Horch and that about 400 others had become the property of the Master Institute of United Arts, Inc. as a result of the foreclosure proceedings. That statement, however, was not made by Horch himself and it was always possible that he might, if the need should arise, claim that his attorney had been mistaken in stating his position.

Consequently, as you know, I have filed, in behalf of Major Stokes, a petition in the supplementary proceedings against Sina Lichtmann and Frances R. Grant to instruct the Receiver to require Horch to make under oath answer to inquiries as to what if any paintings belong to the Nicholas Roerich Paintings & Art Collection, Inc.

That motion was to have been heard this morning, but was postponed until Friday because Mr. Shapiro, representing Horch, is actually engaged as a witness in the trial of a case in White Plains.

The affidavit which Horch filed in reply to our motion papers was, as we anticipated, wholly an attempted evasion. He questions the power of the court to grant any such motion and asserts that the whole thing is a fishing expedition to get evidence for some other criminal prosecution or civil litigation; but he made no denials of any of the allegations in our moving papers.

I am inclined to think that the court will grant our motion. Even if it does not, we have gained one point, because Horch in his affidavit did swear that his attorney had stated his



position to the District Attorney. That commits Horch to the proposition that all the paintings, except about 150 which are the property of Prof. Roerich and are impressed by the Government with a lien in the income tax case, belong either to his wife or to the Master Institute of United Arts, Inc. The bearing of that assertion on the petition to be filed with the Board of Regents will be pointed out later on.

The Receiver, Leonard Biel, Esq., has filed an affidavit in the proceedings, which is very interesting in two respects. In the first place he, in effect, joins in our motion.

In the second place, he shows that Miss Grant claims to own \$3,900 of the second mortgage bonds of the Roerich Museum which were unconditionally guaranteed by Louis L. Horch. As those bonds bear interest at 6-1/2%, and the guaranty covers both principal and interest, and no interest has been paid, they would represent an obligation on the part of Horch for somewhere around \$6,000. He also shows that Miss Grant claims to have advanced Horch the sum of \$1,900 and has back salaries due her in the sum of \$1,200, and also, that she has 75 shares in the International Information Agency, Inc. Consequently, the Receiver asks the court to authorize him to retain counsel and an accountant to investigate the value of these bonds, the Nicholas Roerich Paintings & Art Collection, Inc., and the various trust agreements involving the International Information Agency, Inc., and the possibility of instituting suits in these connections.

I understand also that Mrs. Lichtmann has a letter from Horch showing that she has quite a lot of these second mortgage bonds. She is sending a copy of this letter to the Receiver. The Receiver's idea is that he can bring suit against Horch on his guaranty and make further investigations. Whether or not he can win such a suit against Horch I do not know, but it seems not wholly improbable. If he can win it in behalf both of Miss Grant and Mrs. Lichtmann, it would not only wipe out entirely the judgments for costs which have been secured in favor of Horch and others in the two actions which are on appeal, but might bring in additional amounts from Horch. I am not looking on that as a probability, but wholly as an interesting possibility. It must at least be giving Horch and his attorneys something to think about.

The motion will not be decided on the oral argument Friday. The judge will take the affidavits and briefs and it may take several weeks before he files his decision. If he grants the motion, it will be some time after that before the Receiver will be able to compel Horch to disclose what his claims are. It is of course also possible, if the motion is granted, that Horch may appeal.

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Because of such probable delays and of the fact that Horch has already committed himself to the statements made before the District Attorney by his attorney, I am not going to delay the preparation and presentation of the petition to the Board of Regents. To prepare it properly and get the necessary supporting affidavits will, of course, take me some little time, as there is a great mass of matters to be covered. I am enclosing herewith on a separate paper a very rough and tentative draft of some of the specifications which I am planning to include in the petition. This will eventually be much amplified. The Regents have the power to dismiss trustees for incapacity, misconduct or negligence and to appoint trustees in the place of any that are dismissed. The specifications, as you will notice, bear on those three grounds.

I shall let you know as soon as there is any indication as to what the court is likely to do about the motion.

Very truly yours,

Nathan A. Smyth

NAS\*MA  
Enc.

August 3, 1938.

Mrs. H. G. Campbell,  
34 Gramercy Park,  
New York, N. Y.

Dear Mrs. Campbell:

This letter is to summarize for you what I have said in our talks today as to why it seems to me that the only step to protect the Roerich interests which can now be taken with the slightest chance of success, other than the effort to win the case pending before the Court of Appeals, is to present to the Board of Regents the petition for the ouster of the Horch crowd as Trustees of Roerich Museum. I shall discuss first the other possible lines of action which have been suggested:

1. Actions for libel or slander against Horch and others in behalf of Prof. Roerich.

The first difficulty here is that any such action has to be brought within one year from the date when the libel or slander was uttered. The specific libelous or slanderous statements have to be alleged. I have not heard of any statements within a year made by Horch upon which an action for slander could be predicated. The second difficulty is that it would be wholly impracticable to seek to bring such an action without the presence of Prof. Roerich in this country.

2. An action on behalf of Prof. Roerich to recover the expenses of his expeditions, predicated on the theory that the moneys advanced by Horch which are in question in the tax case before the Board of Tax Appeals were paid, as Horch asserts, for paintings and not to defray the cost of the expedition.

Such an action, of course, could not be brought unless and until the Board of Tax Appeals should decide against Prof. Roerich. The first difficulty here is that such an action has to be brought, under our statute of limitations, within six years after the obligation to pay for the expenses of the trips accrued. That period has already gone by. The second difficulty is that the obligation to pay for the trips, according to the records, was that of Roerich Museum, and the action would have to be against the present Roerich Museum educational corporation. If a judgment were had, that corporation has not the money to pay it. If it could be paid, Horch himself could collect it on execution under the judg-

ment which he obtained in the Supreme Court against Prof. Roerich unless that judgment is overruled on appeal. The last mentioned difficulties do not need much consideration, because that of the statute of limitations seems to be insuperable.

3. Some action for breach of trust or misrepresentation brought against Horch in behalf of Prof. Roerich or some other of the individual Trustees who are still working with him.

When Horch had the Roerich Building turned over to the Master Institute on the reorganization proceedings, he represented that it was an educational corporation controlled by the Roerich interests. In view of what he was at that time doing and planning to do in connection with the transfer of the shares of stock of the Master Institute to Mrs. Horch, he was, in my judgment, engaged in misrepresentation and fraud.

The first question which has to be answered in considering whether an action could be brought on this score, is what party or parties could have standing in court to bring an action. The Bondholders' Committee might bring one to have the deed to the Master Institute set aside on the ground of misrepresentation; but as I understand there is no possibility that such committee would do any such thing. The Roerich Museum, as a corporation, might perhaps bring such an action; the present impossibility of having it bring one will be referred to later.

The individuals who were at that time acting as Trustees of the Master Institute and consented to the acquisition of the Roerich Building on the understanding that the Master Institute was and would remain under the control of the Roerich interests, would have no standing in court, as individuals, to move to set the transfer aside. Any right of action from the point of view of the Master Institute belongs to it as a corporation, not to the individual trustees. Nor could those individuals, in my judgment, have any chance of success in an action for money damages which they suffered personally as a result of the deceit practised upon them, because of the well established principle that only such money damages can be collected as can be proved with definiteness and certainty. What they might have received by way of financial compensation had the misrepresentation not been made to them is only hypothetical. It is entirely possible to suggest various ways in which they might have prospered financially had the deceit not been practised, but it cannot be

definitely proved that anyone of those ways would actually have come about. Damages cannot, in law, be measured by ifs.

The whole difficulty in this matter, from the point of view of the individuals concerned, is that all of those who have been injured entrusted to Horch their legal rights, relying on his supposed moral rectitude. That he proved false to his moral obligation does not now give them ground to complain at law for his exercise of the legal rights which they, in mistaken confidence, turned over to him. The only possible action which in my judgment can be looked to with any possible hope of success to protect the individual's rights is that which is now on appeal to the Court of Appeals. While the chances of success on that appeal are none too good, they are sufficient in my judgment to warrant making every effort to win it.

Perhaps I should reiterate the distinction between a corporate entity and the personalities of the individuals who are directors or trustees of the corporation. The fact that a corporation may have rights does not give the directors or trustees as individuals any standing in court to sue as individuals to enforce the corporate rights. Such rights of action for Horch's misconduct as exist reside in the Roerich Museum as an educational corporation and not in the individual trustees.

The difficulty is that that corporation cannot start any litigation except upon action taken by a majority of a quorum of its Trustees. While a quorum of the Trustees are in this country, they divide half and half, so that with the Roerichs abroad there is no possibility of starting anything in behalf of the corporation. Unfortunately the absent Trustees cannot vote by proxy or by mail, they must be personally present.

Having canvassed in my mind the possibilities of all potential lines of action, I have come to the conclusion that the only possible step, unless some of the Roerichs are going to be in this country within the next few months, is to try to have the Horch interests thrown off the Board of Trustees of the Roerich Museum through such a petition to the Board of Regents as I have suggested. If that should succeed, the Board of Regents would appoint the successors. It is quite likely that it would not accept nominations from the present Roerich interests. The Board, however, is composed of men of very high standing and any successors whom it would appoint would unquestionably join with the Roerich interests in trying to protect the properties of Roerich Museum and to find some way to carry on its cultural activities.

If the Board of Regents should dismiss the Horch

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trustees and appoint new ones in their places, the next step would be for the reconstituted Board of Trustees of Roerich Museum to institute such litigations and take such other steps as might be necessary to prove its ownership of Prof. Roerich's paintings and of such other properties as it has and to recover possession of them. That it could succeed in any such action cannot be stated positively. There is, first, the question of whether some of the paintings in reality belong to the Nicholas Roerich Paintings & Art Collection, Inc. From all that I have been able to learn I do not think that such corporation ever secured title to them, although Horch may have in his possession documents which show that it did. In this connection his recent affidavit that his position is that the Nicholas Roerich Paintings & Art Collection, Inc. has no claim in any of the paintings is significant and important.

Some of the paintings undoubtedly belonged to the Roerich Museum. Horch concedes that, with reference to those for which Prof. Roerich secured his credit of \$200,000 from the Roerich Museum. Even the fact that the Roerich Museum has failed to pay the interest on that \$200,000 did not deprive it of title to the paintings because, so far as I can find, there were no legal documents executed which gave Prof. Roerich the right to take the paintings back if the interest was not paid.

Whether or not the paintings which did belong to the Roerich Museum were transferred to the Master Institute as a result of the foreclosure proceedings depends upon what construction is to be given to the language of the mortgage which the Roerich Museum gave on its building and the deed to the Master Institute of the properties that were mortgaged. The paintings are not specifically mentioned in the description of what was mortgaged. Horch's attorneys now assert that they are covered by the general language mortgaging and conveying the furniture and equipment used in the operation of the building. There is some basis for that contention, but my own opinion is that the language did not cover them. Whether or not it did can eventually be decided only by a court. In any event, the only way that the question can be raised is by having the Roerich Museum bring an action which will raise it. If the Roerich Museum does not bring such an action, the Master Institute will remain in possession under claim of title, will concede that Mrs. Horch owns some of the pictures, and will, undoubtedly, so dispose of the rest as in some way to Benefit Horch. The only course that I can see which can save the pictures from that fate, unless the Court of Appeals reverses the lower courts in the case now before it, is to have the Roerich Museum bring an action.

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It is for that reason that I have suggested and presented for consideration the proposed petition to the Board of Regents. If that is not presented to the Board, there is nothing else that I know of that I can do in the matter and the only hope that I can hold out to Prof. Roerich and his associates is that the Court of Appeals may reverse the lower courts.

Miss Grant and Mrs. Lichtmann are somewhat perturbed as to results which might possibly flow from presenting a petition to the Board of Regents; this apart from the obvious uncertainty as to whether or not the Board will grant the relief asked in it. Their difficulties are as follows:

The petition charges misconduct on the part of Horch in attempting to mislead creditors of Roerich Museum by creating a pretended ownership of the paintings in Nicholas Roerich Paintings & Art Collection, Inc., in spite of the fact that through the Roerich Museum he had represented to the Board of Regents and to the Chemical Bank, as a basis for its loan, that the paintings were the properties of the Roerich Museum. The fear is that the criticism may be made before the Board of Regents that what Mr. Horch did in these matters was made known to the other Trustees and to Prof. Roerich and that, if Horch miscondacted himself, so did they; and that, as a result, the Board might make charges against and dismiss the other Trustees or decide to terminate the existence of the Roerich Museum as an educational corporation. Such consequences are of course possible, but personally I am inclined to discount them.

In the first place, I do not think that the Nicholas Roerich Paintings & Art Collection, Inc. was ever anything more than a dummy corporation. The minutes of the meetings of its Directors do not show that it ever acquired any property or paid anything for or in any way accepted title to the paintings or ever did any business. The paintings could not have been effectively given to it by Prof. Roerich unless it accepted them, and it could not accept them without action on the part of the Board of Directors. In the second place, everything shows that all of the other Trustees trusted Mr. Horch implicitly so far as his conduct of legal and quasi-legal business affairs was concerned. They had an impression that the Nicholas Roerich Paintings & Art Collection, Inc. was formed in order to "safeguard the paintings", but they apparently took part in no steps and do not remember any steps which were actually carried out to that end. I do not see how Horch could charge them with guilt without first admitting his own greater guilt and I do not believe that he would admit his own guilt just for the sake of trying to in-

jure them. Of course, I might be wrong in that respect.

Even if the Board of Regents should, as a result of this petition, take action to wind up the Roerich Museum as a corporation, the responsibility for getting possession of the properties of the Museum and disposing of them in the public interests would rest upon the Board itself and the courts. Some of the paintings, if the Roerich Museum can prove title to them, might have to be sold to pay debts of the corporation, which Mrs. Lichtmann and Miss Grant think may amount to about \$75,000. In any event, the sale of the paintings would be made, not by Horch through the Master Institute for his own interests, but under court supervision in behalf of the public interests. That of itself would be at least some gain.

In considering the potentially dark sides of the picture, we must also consider the possible bright side. If, as a result of this petition, the four Horch Trustees should be ousted and disinterested ones put in their place and the Roerich Museum should then, through action by its newly constituted Board of Trustees, recover the Nicholas Roerich paintings, it might well be able to put itself in funds, through appeals through friends and otherwise, to such an extent that it could resume its educational and cultural activities and carry on the work which Horch has destroyed. It seems to me that the possibility of such a happy outcome justifies the chances which have to be taken and the long arduous course which has to be entered upon.

I think it might be well for you to forward to Prof. Roerich a copy of the proposed petition to the Board of Regents which I have furnished you. He can then see precisely what we are talking about.

A word, in addition, as to properties which Sviatoslav Roerich transferred to the Roerich Museum in May 1931. I do not see how there is any way that he can recover these properties. He made a valid legal transfer of them in satisfaction of all claims for money due from him to the Roerich Museum. It cannot be urged now in his behalf that the transfer was only a fictitious one, made to protect him from his creditors or potential creditors, because even if it was, the transfer was good at law and in my judgment cannot be set aside.

Very truly yours,

Nathan A. Smyth