

STATE OF NEW YORK :
COUNTY OF NEW YORK :ss.:
CITY OF NEW YORK :

WALTER V. BOUQUET, being duly sworn deposes and says that I was a clerk in the law firm of Roe & Kramer, of 68 William Street, Borough of Manhattan, State, City and County of New York, the attorneys for the Roerich Museum.

That on April 19, 1932, about 4:30 p.m. I attended a meeting, in Room 1076 of the Hotel Commodore, at Lexington Avenue and 42nd Street, Borough of Manhattan, State, City and County of New York, by and between Dr. Walter Koelz, and Louis L. Horch, President, Maurice M. Lichtmann, Vice-President, and Sina Lichtmann, Vice-President, of the Roerich Museum, respectively.

That your deponent was present when the demand for the return of the two guns, the property of the Roerich Museum, was made on behalf of the Roerich Museum, by Sina Lichtmann in the form of a question in which Dr. Koelz was asked whether he brought the guns with him back to America. To this question Dr. Walter Koelz replied: "No" and attempting to excuse himself from the performance of this act pleaded ignorance of his duty to return these guns in New York, stating that: "I did not want to be bothered with fire arms on my way to America."

That thereupon Dr. Koelz was asked by Mrs. Lichtmann and Mr. Horch to state where the guns were at present, to which question he answered that, at present, they were in the possession of his former servant Rupchand, who received these guns from Dr. Koelz, prior to the latter's departure from India. To excuse this act of ownership Dr. Koelz also stated that he was always "under the impression" that these guns were the "gifts" of the museum to him, and that he, therefore, at all times regarded them as his property.

To this Mrs. Lichtmann replied that the museum authori-

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ties paid for these guns and have receipts to show this, whereupon Dr. Koelz conceded that he might have been mistaken about the ownership of these guns, but that even though the museum is the owner of these guns, he (Dr. Koelz) was willing to buy them from the Roerich Museum authorities now.

That this proposal was not received with favor by the museum authorities present at this meeting, who insisted that, in view of the extremely serious social and political conditions in India, the two guns, owned by the Roerich Museum, be returned to the museum authorities in India as speedily as possible.

That urged by those present at this meeting, and reminded by your deponent of the serious legal consequences of unlawfully holding on to the museum's property, Dr. Walter Koelz was finally persuaded to draw up two documents that would have enabled the Roerich Museum authorities in India to peacefully secure the possession of the two guns.

That to accomplish this purpose Dr. Koelz wrote two letters. One was addressed to the British Police authorities in Kulu, India, and authorized them to retake the guns from their present holder, Rupchand. The other letter was written to Dr. Koelz's former servant Rupchand, and contained a direction to the latter to return the two guns to the police authorities in India.

That the letter to the British Police authorities frankly and openly admitted the ownership of the guns in the Roerich Museum. The letter to Rupchand, however, did not contain any such statement of ownership and was, for this reason, found unsatisfactory to all those present at this meeting, including your deponent.

That all of those present, including your deponent, urged Dr. Walter Koelz to include a statement of ownership of the two guns in the Roerich Museum, so as to remove all doubts as to their ownership in no one else but the Roerich Museum, but that Dr. Walter Koelz, steadfastly, tenaciously and obstinately refused so to do.

That your deponent believes that the reason why Dr. Koelz was unwilling to add such a statement to his letter to his former servant Rupchand, is due to the fact that Dr. Koelz previously represented to Rupchand that he (Dr. Koelz) was the true owner of the guns, and that by admitting the ownership in these guns, in the Roerich Museum now, he would make a bad impression with the aforementioned Rupchand.

That, in spite of much patient urging by all present at this meeting, and especially by your deponent, Dr. Walter Koelz finally, flatly refused to draw up any papers to accomplish the return of the two guns to the Roerich Museum, and suggested that this question be settled the next day, after he consulted a lawyer as to his legal rights in the matter, further intimating that the Roerich Museum authorities would have to reclaim the two guns thru the regular police and legal channels available in India, whereupon your deponent, together with all of the other representatives of the Roerich Museum left Dr. Walter Koelz's room.

Sworn to before me this
5th day of January, 1933.

John P. McKenna

JOHN P. McKENNA
NOTARY PUBLIC, Queens County
Clerk's No. 1175, Register's No. 1166
Certificate filed in New York County
Clerk's No. 138, Register's No. 4Mc74
Certificate filed in Kings County
Clerk's No. 63, Register's No. 4085
Certificate filed in Nassau County
Commission Expires March 30, 1934

Walter V. Bouquard

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STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

WALTER V. BOUQUET, being duly sworn, deposes and says: I am an attorney and counsellor at law duly licensed to practice law in the State of New York. I was formerly associated with the law firm of Roe & Kramer with offices at 68 William Street, New York City.

During my association with this firm I handled the proceedings in the two actions brought by the Roerich Museums against Walter Koelz. That upon the arrival of Walter Koelz from India I also attended a meeting which was held in Room 1076 of the Hotel Commodore at Lexington Avenue and 42nd Street, Borough of Manhattan, New York City. This meeting was attended by Louis D. Horch, President, Maurice M. Lichtman and Sina Lichtman, Vice-Presidents of the Roerich Museum, respectively. Walter Koelz was also present at this meeting in person.

I annex herewith a supplemental affidavit which deals with this meeting, which affidavit I make a part hereof as though the same were herein fully set forth.

As appears from this affidavit, Walter Koelz admitted the ownership of the guns in the museum and, at that meeting, was finally persuaded to draw up two letters by which the return of the guns from his servant Rupchand to the British Police authorities in Kulu, India, would have been accomplished. However, as appears from the supplemental affidavit, Walter Koelz refused to sign.

That thereafter, two actions were started against Walter Koelz, which actions were subsequently settled on the 2nd day of August, 1932.

That the terms of settlement of these two actions

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were arranged by and between Louis P. Horch, the President of the Roerich Museum and one Sigfried Hartman, an attorney duly licensed to practice law in the State of New York, who was then representing Walter Koelz. That two of the conditions upon which the settlement was based were the return within 6 months of the Museum diary kept by Walter Koelz while in the employ of the museum, and the immediate return of the guns of the museum to the museum authorities, which guns were then held by Walter Koelz' servant, Rupchand.

That your deponent personally verified these terms of settlement in a subsequent conference with Alex Cracovaner, an attorney in the employ of Siegfried Hartman who had personal charge of the cases in which Walter Koelz was defendant. That on the strength of the assurances of the fulfillment of these terms, which assurances were made to your deponent by Alex Cracovaner on behalf of Walter Koelz, the two actions which were previously started in the New York Supreme Court against Walter Koelz, one for breach of contract, the other for libel and slander, were discontinued. That at the time of the settlement, Walter Koelz's attorney, Alex Cracovaner, assured your deponent that the second half of the diary would be turned over to the Museum within the next six months from August 2, 1932. That then and there your deponent was also shown two letters, one addressed to the British Police in India and the other to Rupchand by which letters, in view of the claim of ownership in the museum, the return of the guns to the museum would have been accomplished. These letters were later mailed to their respective addressees.

At this conference your deponent requested copies of these two letters but was not given any on the ground that none were available at the time, but Alex Cracovaner promised to furnish your deponent with copies within the next few days

upon communicating with one Burke, also an attorney in the State of Michigan who was also then representing Walter Koelz. That relying on the promises of a fellow member of the Bar and on the strength of the professional ethics of the legal profession, your deponent did not object further to the settlement of the action on the terms previously agreed upon by Louis L. Horch and Siegfried Hartman.

That thereafter, on several occasions, by phone and in person, your deponent made requests and demands of Alex Cracovaner, an attorney in Siegfried Hartman's employ, for copies of the promised letters but that on each occasion was told that they would be forthcoming from one Burke who was then representing Walter Koelz from Michigan.

That in addition to the oral request, on August 18, 1932 and on October 19, 1932, your deponent also wrote to Alex Cracovaner reminding him of his previous promises to furnish your deponent with copies of the aforementioned letters as well as a definite written statement from his Michigan attorney as to a return date of the diary. That on both of these occasions your deponent never received a satisfactory reply except a statement that Mr. Burke " was morally certain that Dr. Koelz had no intention of establishing a competitive unit "in India.

That as appears from this affidavit and as a result of the personal experiences of your deponent, your deponent found Walter Koelz, at all times, in no way willing to cooperate with your deponent, or even his own attorneys, and in various ways was apparently desirous of avoiding his just obligations or the fulfillment of his own promises solemnly made to his own attorneys, which promises served as the basis of the settlement of the two actions started against him by the Roerich Museum.

Your deponent is absolutely certain that the

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two actions against Walter Koelz would have never been settled and the releases based thereon would have never been exchanged had it been then known to your deponent or to the Roerich Museum that Walter Koelz would not carry out his promises to return the guns of the Roerich Museum and the scientific diary to the Museum.

Your deponent is of the firm belief that the promises of Walter Koelz to return the guns and the diary, having been made prior to the settlement which was based thereon, now not having been carried out because of the unfaithful and fraudulent conduct of Walter Koelz, made the releases, both in law and in equity, void and of no force and effect whatsoever.

Sworn to before me this
10th day of January, 1933.

John P. McKenna

JOHN P. MCKENNA
NOTARY PUBLIC, Queens County
Clerk's No. 1175, Register's No. 1166
Certificate filed in New York County
Clerk's No. 138, Register's No. 4Mc74
Certificate filed in Kings County
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Walter V. Benguet

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Suggestions made by Mr. Walter V. Bouquet, on January 20th, 1933, for suit against Dr. Walter Koelz. These actions can be started only wherever Dr. Koelz may be located.

ACTIONS AVAILABLE TO THE ROERICH MUSEUM.

1. Equity actions to set aside the releases on the ground that they were obtained thru fraud, and also on the further ground that there was a failure of consideration. Then proceed with the original actions of libel and slander, as well as breach of contract.

OR

2. Start independent actions against him in breach of contract and libel and slander. If the releases are pleaded in defense, reply that the releases were obtained in fraud and there was a failure of consideration.

Fraud is difficult of proof and it is preferable that more stress be laid on the defense of failure of consideration.

3. Replevin actions for the guns, diary and other things, papers and documents which may still be in Dr. K's possession. Replevin is to be preferred to conversion because the specific thing is the object of the suit and damages are assessed for the unlawful withholding.

Detinue is another remedy, although this actions is now rare. In effect it is similar to replevin.

Tender of property goes to mitigate damages only.

4. It is my belief that as a result of the English Judicature Act of 1873, an injunction action may be had even against a libel, where irreparable damage is shown.

In England, once upon the time, where falsity of publication was shown, injunction was available on the ground of unfair competition. This would depend on facts to be gotten on the ground. It would be applicable to K. if he in any way holds himself out as in some way connected with the Museum. Here a property right must be involved.

The above expression of opinion are given on the basis of the law available thru American channels. It is suggested that legal advice, in India, be sought to see if their laws, local and state as well as court decisions in any way modify the American Common and Statutory Law of New York State.