

(C O P Y)

New York June 24th 1898.

Jacob H. Schiff, Esq.,

27 Pine Street, New York.

My dear Mr. Schiff:-

Referring to your letter of May 26th regarding O. R. & N. stock, I would say that I recently submitted same to Mr. Stetson to get his opinion as to what you therein suggest.

I herewith enclose copy of his opinion which I have received to-day and to which you will no doubt give due consideration.

It might be well for you to submit the matter to other counsel so that before we proceed we shall understand exactly where we stand.

Yours very truly

(Signed) C. H. Coster.

New York June 24, 1898.

NORTHERN PACIFIC.
O. R. & N.

Charles H. Coster Esq.,
23 Wall Street, City.

My dear Mr. Coster:-

Referring to our conversation of June 8, concerning the letter addressed to you under date of May 26, by Mr. Jacob H. Schiff, relating to the agreement of February 15, 1897, as to the purchase of Oregon Railroad & Navigation Stock, and particularly to Article IV. thereof, I have to say that I have carefully considered the letter and the contract (both of which I return herewith), and have reached the following conclusion:

Article IV. of the contract confers no absolute right upon either the Union Pacific Railroad Company or upon the Oregon Short Line Railroad Company in respect of the stock to be reserved thereunder - as neither of these latter Companies are parties to the contract, and the question of any sale whatever of this stock to the Union Pacific Railroad Company or to the Oregon Short Line Railroad Company, as well as the terms of sale, is solely and exclusively within the discretionary power of Messrs. J. P. Morgan & Co. for the Northern Pacific Railway, and Messrs. Kuhn, Loeb & Co. for the Great Northern Railway, the grant of power being as follows:

".....and if in order to promote and facilitate the accomplishment of any such purposes, the parties of the second part and the parties of the fourth part shall so deem expedient, they may, in their discretion, sell and deliver at such price, not less than cost and interest, as they may deem proper", &c.

The stock thus to be sold was to be taken and delivered equally from the interest of the two Railway Companies, parties to the contract, in which stock neither of the banker firms had any ownership or any interest except for their commissions and charges.

Therefore, we have a case in which an agent is authorized to sell property of his principal to a third party, at such price, not less than cost and interest, as he shall deem expedient. In the exercise of this discretionary power, the agent, having sold the property at a price in excess of cost and interest, must account to his principal for the entire amount received, and is entitled to deduct only his proper costs and commissions. If voluntarily he chooses to waive his legal rights and to charge no commission, then he must pay over to his principal the whole amount received, that being exclusively the proceeds of his principal's property.

This conclusion, in conformity to the general rule of law and with the earlier provisions of this Article IV., is in no wise affected by the provision that after any such sale, and from the proceeds thereof, there shall be paid over equally to the two Railway Companies, severally and respectively, the "cost and interest of the shares sold".

If this provision has any effect except as a limitation in respect of the price at which the agent may sell, it constitutes a measure of the compensation or commission which the agent may receive for making the sale, and does not create a right in favor of any third person, nor does it otherwise affect the duty of the agent to account to his principal for the actual proceeds of the principal's property sold by the agent.

For these reasons, among others, I am unable to concur in the opinion expressed by Mr. Schiff, and am unable to find in the contract any provision that the "Northern Pacific and Great Northern Companies were in any event not to receive over the cost and interest of any shares sold to the Union Pacific and Oregon Short Line Companies".

As already observed, the stipulation to my mind is perfectly clear that these Companies were in no event to receive less than the cost and interest of such shares; but it does not imply that they may not receive more. Certainly, the excess would belong to someone - not, as already observed, to the Union Pacific or Short Line Companies, and clearly not to the agents: therefore, it must go to the principal owners of the property, the two Railway Companies.

I am,

my dear Mr. Coster,

Your obedient servant,

(Signed) Francis Lynde Stetson