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Article Summary: Plans for an intercoastal rail connection to run through Brownville and Fort Kearney date from 1856. Only ten miles of the route were ever constructed. Losses resulting from investment in Brownville bonds to finance the project put an end to the town's dream of commercial success.

***Scroll Down for complete article.***

#### Cataloging Information:

Names: Thomas W Tipton, Robert Furnas, H C Lett, Joel N Converse, Joseph Smith, Henry M Atkinson, Shellabarger (an Ohio stockholder who represented Brownville in court), John McPherson, John M Thayer, J W Blackburn, John L Carson, William Hoover, G Moodie, David Butler

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# The Brownville, Fort Kearney and Pacific Railroad<sup>1</sup>

*By James J. Blake*

**I**N the early history of Nebraska there is perhaps no more extraordinary story than that of the Brownville, Fort Kearney and Pacific Railroad—that pioneer adventure in Nemaha County planned for 540 miles of which only ten were ever constructed and four were permanently operated.

Regarded by some as a fraud and by others merely as an unfortunate speculation, the struggles surrounding its construction and liquidation found their dreary climax only in the United States Supreme Court itself. So distinguished a Nebraskan as J. Sterling Morton implied strongly twenty-five years after the abandonment of the line that its sole purpose had been public plunder through Brownville bonds, and in his opinion the support by that city of the ill-fated project represented an example of “communal suicide.”<sup>2</sup>

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<sup>1</sup>My indebtedness for assistance in writing this paper is considerable. The stories of Mr. William (“Billy”) Vance of Peru first led me to investigate the subject; the efforts of Miss Nellie Carey, Librarian of Peru State Teachers College, made possible the examination of material not available to me there; and Miss Myrtle D. Berry, Research Associate of the Nebraska State Historical Society (hereafter NSHS), extended many courtesies, and to her I owe the source on Joel N. Converse. Mr. Lorin P. Jones and Mr. Bart Holdrege, County Clerks of Nemaha and Webster counties, respectively, and Mr. E. E. Rodysill, District Clerk of Nemaha generously permitted examination of sources in their offices. Miss Louise Mears offered helpful bibliographical leads.

<sup>2</sup>J. Sterling Morton, “Costs of Local Government—Then and Now,” *NSHS, Proceeding and Collections*, Second Series, II (1898), 61.

One may speculate whether it was this interpretation of the railroad which resulted in its almost complete omission from the legislative history of Nebraskans in Congress, written by former Senator Thomas W. Tipton, its once indefatigable advocate in Washington.<sup>3</sup> Tipton could hardly be blamed for wanting to forget the Brownville, Fort Kearney and Pacific of which he once had been a proponent, if the jibe attributed to the pioneers is true; that the only train the road ever "ran" was pulled by a yoke of oxen!<sup>4</sup> And perhaps in his own day, as even in this, the remnants of the old embankment were pointed out to the visitor in Nemaha County with mingled amusement and irony.

Plans for a railroad from Quincy, Illinois or Keokuk, Iowa to Fort Kearny, via Brownville, were conceived as early as 1856. In the following spring the Brownville and New Fort Kearney Railroad Company was organized to construct a single or double track line from the Missouri River at Brownville to New Fort Kearny, and then to the western boundary of the Nebraska Territory. The outbreak of the Civil War forced an abandonment of the project, and it was not until the proposed extension of the Mississippi and Missouri River Air Line Railroad across Missouri after the conflict that hopes of an inter-coastal rail connection were revived in southern Nebraska<sup>5</sup>.

To its promoters, Brownville in 1867 seemed to be the natural terminal for any western link in a new railway system, for at least three reasons. Geographically astride the shortest route between the oceans—on an "air line," as was claimed<sup>6</sup>—it was the seat of Nemaha County which boasted 8,500 residents and a hinterland of Johnson, Clay, Saline, and Fillmore counties with over 6,000 more. Eco-

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<sup>3</sup>Thomas Weston Tipton, *Forty Years of Nebraska—At Home and In Congress* (NSHS, *Proceedings and Collections*, Second Series IV[1902]).

<sup>4</sup>*Who's Who in Nebraska* (Lincoln, 1940), p. 836.

<sup>5</sup>*Statement of the Brownville, Ft. Kearney and Pacific Railroad Company* (Brownville, 1870), p. 1; *The Advertiser* (Brownville), March 26, 1857; April 2, 1857.

<sup>6</sup>*Nebraska Advertiser* (Brownville), April 11, 1867.

nomically, the possibility of coal deposits in Nemaha and of salt springs in Saline would enhance the value of any route stemming westward from Brownville.<sup>7</sup> Finally, it was commonly held that a federal land grant could easily be secured for a railroad in that part of the state as none had yet been made, while at the same time some 500,000 acres of Nebraska internal improvement lands were still undistributed.<sup>8</sup>

As the Air Line Railroad pushed its way steadily across Missouri, a vigorous campaign was begun to secure Brownville as its terminus, rather than Nebraska City. A public meeting presided over by Mayor Jarvis S. Church was held on May 12, and after listening to the oratory of Senator Thomas Tipton and Colonel Robert Furnas, a committee was appointed to push the railroad interests of the city.<sup>9</sup> The visit to Brownville on May 28, of General David Moore, president of the Air Line,<sup>10</sup> led to the organization of the new Brownville, Fort Kearney and Pacific Railroad Company.<sup>11</sup> It was not until June 20, however, that public announcement was made that the railroad would accept subscriptions to its stock beginning July 15. Included among its sponsors were such notables as Mayor Church, Colonel Furnas, and John L. Carson, prominent local banker.<sup>12</sup>

The response to these early promotions was more than gratifying—\$100,000 was subscribed in three days from the opening of the books, and by the end of August the railroad corporation was proudly declared to be a "fixed fact." There seemed to be no limit to the railroad possibilities of the city: the Air Line would link it with the east; the Brownville, Fort Kearney would link it with the west; the At-

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<sup>7</sup>*Ibid.*, March 28, 1867.

<sup>8</sup>*Ibid.*, May 2, 1867.

<sup>9</sup>*Ibid.*, May 16, 1867.

<sup>10</sup>*Ibid.*, May 30, 1867.

<sup>11</sup>*Ibid.*, August 29, 1867.

<sup>12</sup>*Ibid.*, June 20, 1867.

chison and Nebraska City railroad, building from the south would pass within twenty-five miles of Brownville; and the St. Joseph and Council Bluffs, with proper financial inducement, would build to within a mile and a quarter of the ferry landing across the river. Hints that eastern capital was interested in the new inter-ocean project made the railroad future of the city truly seem "glorious."<sup>13</sup>

When the Air Line surveyors reached Scott City across the river early in September, they were escorted over to Brownville by President John McPherson of the Brownville Railroad, Colonel Furnas, and Senator Tipton, and were greeted on their arrival by the boom of cannon, the strains of music, and the warmth of speeches.<sup>14</sup> They remained as guests of the city for the weekend, and before leaving for Quincy to make their report, they declared that 70 miles of road west from that city would be let for construction that fall, and that northern Missouri counties had already voted nearly \$750,000 for the railroad. The hint was obvious and the financial committee of the Brownville Railroad went to work.<sup>15</sup>

In October, it was the unanimous vote of Brownville—211—which ratified a proposed county improvement fund which included \$1,000 for the railroad survey. The company was fully organized that month for business and politics with McPherson reelected president; R. W. Furnas, vice-president; J. W. Blackburn, secretary; and John L. Carson, treasurer. A board of seven directors was also chosen.<sup>16</sup>

With the survey fund carried, an enthusiastic mass meeting on November 14 framed two more petitions. One asked the city to appropriate \$1,000 to cover the costs of a Washington delegation for a railroad land grant; the other asked the county commissioners to hold a referendum

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<sup>13</sup>*Ibid.*, August 29, 1867.

<sup>14</sup>*Ibid.*, September 11, 1867; September 19, 1867, reprinted from Quincy Herald of September 2, 1867.

<sup>15</sup>*Nebraska Advertiser*, September 11, 1867.

<sup>16</sup>*Ibid.*, October 17, 1867; October 31, 1867.

in Nemaha on subscribing \$300,000 to the capital stock of the Brownville Railroad.<sup>17</sup>

The end of 1867, then, saw Brownville making the first serious attempts at those financial commitments to which Morton would later attribute her ruin. On November 30, the city council voted \$1,000 for a Washington lobby, and suggested, subject to the railroad's approval, that McPherson and Furnas make the trip. Four days later, the county commissioners fixed January 7, 1868 as the referendum date on the question of voting not \$300,000, but \$350,000, in twenty year bonds to aid the Brownville Railroad.<sup>18</sup>

Here now was the chance for the city to begin that predicted "... new era in her progress and prosperity which will know no stoppage until she becomes one of the leading cities of the Missouri valley, a centre known to the commerce of the world."<sup>19</sup>

The arguments advanced to support the bond issue were embellished during the next month with stupendous visions of public profit. Proponents of the \$350,000 measure fervently declared that once the railroad was secured, real estate values in the county would be worth more than twice that amount and the value of corn, wheat, and cattle would jump to more than triple the tax levied to pay for the bonds. The expenditure of \$8,000,000 on construction work would line the pockets of every mechanic, tradesman and farmer along the route of the railroad. Ratification of the proposal would prove to Congress that local capital already existed to utilize a federal land grant, and it would also increase the reported interest of financiers in central Illinois, Indiana, Ohio, and Pennsylvania who had already marked

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<sup>17</sup>*Ibid.*, November 21, 1867.

<sup>18</sup>*Ibid.*, December 5, 1867.—The total expenses of sending Robert Furnas and John McPherson to Washington were \$780.00. (*Nebraska Advertiser*, August 5, 1869).

<sup>19</sup>*Nebraska Advertiser*, September 11, 1867.

Brownville as the point through which the great new central railroad would pass.<sup>20</sup>

As a guarantee of the public interest the sceptics were reminded that the railroad had agreed to regard the \$350,000 as stock in the line, held by the county as 350 shares subject to the usual dividends and assessments. This, it was pointed out, would ensure adequate protection for the county investment, as private business interests held only \$240,000 worth of stock, or 240 shares.<sup>21</sup> The most elaborate calculations were printed in the *Advertiser* to prove that Nemaha County would gain more than it would contribute to the railroad. A lengthy letter signed "M" offered statistics to prove that at the end of twenty years, the county would collect a clear profit of \$994,000 on its original investment; another from a "wealthy" farmer showed that railroad transportation would double land values and enable Brownville farmers to ship their corn to the best markets.<sup>22</sup>

The attempts of the opposition, chiefly outside Brownville, to discredit the scheme and the impending debt seemed pallid beside the glowing paper profits ceaselessly repeated by the railroad's promoters. To the almost prophetic charge that the line might not be built after the bonds had been voted, it was answered that the referendum would authorize the Commissioners to issue the bonds, but would not compel them to do so if the line failed to materialize.<sup>23</sup> An almost iron-clad guarantee of good faith was made by the company in the last days of the referendum campaign when its officers promised flatly that if the land grant failed in Washington, they would not ask for the \$350,000, despite its approval by the voters. In addition, they promised that railroad stock would readily be issued for the bonds to the county, and treated equally with that of private subscribers.

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<sup>20</sup>*Ibid.*, December 12, 1867; December 19, 1867.

<sup>21</sup>*Ibid.*, December 26, 1867.

<sup>22</sup>*Ibid.*, January 2, 1868; December 19, 1867.

<sup>23</sup>*Ibid.*, December 26, 1867.

This important series of promises led Commissioner Frederick G. Holmes, previously opposed to the bond issue, to withdraw his opposition.<sup>24</sup>

These maneuvers and the intense campaign to assure Brownville solidarity for the railroad brought but shaky approval for the bonds and tax on January 7. The final vote in the county showed 523 for the issue, and 483 against. Of the ten precincts outside Brownville, only one—Nemaha City, by 40 to 37—supported the project. As with the county improvement fund the preceding October, it was the votes of Brownville that carried the margin of victory. There the decision was 402 to 25, a smashing approval.<sup>25</sup>

The verdict was no sooner announced than it was challenged as a deliberate fraud. At Glen Rock where the vote had been 69 to 3 against the bond issue, a mass meeting declared the county had actually rejected the proposal, "notwithstanding the extraordinary inducements offered by the friends of the measure to produce a different result, not the least of which was a large supply of whiskey." Although favoring railroad extension in the state, the irate citizenry denounced "donations to kite flying companies, organized solely on a subscription basis, without a dollar of paid-in capital, whose avowed object is to sell out at their convenience."<sup>26</sup>

In Nemaha City, Commissioner Holmes who had been appointed by his colleagues to represent the county in Washington during the lobbying for a land grant, and for whom \$500.00 in expense money has been appropriated,<sup>27</sup> was bitterly attacked. A resolution criticized his judgment, consistency, and appreciation of the rights of the people and urged "for him *at least* a speedy return to private life."<sup>28</sup>

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<sup>24</sup>*Ibid.*, January 2, 1868.

<sup>25</sup>*Ibid.*, January 16, 1868.

<sup>26</sup>*Ibid.*, February 9, 1868.

<sup>27</sup>*Ibid.*, January 16, 1868.

<sup>28</sup>*Ibid.*, February 9, 1868.



But these indignation meetings were the wails of a beaten opposition; the railroad and Brownville had won. To prove it, on February 13, the highly favorable Air Line survey report was published,<sup>29</sup> and in Washington Senator Tipton had introduced on January 29 and February 19 the first bills calling for the cherished federal land grant.<sup>30</sup> There were stories about Brownville citizens receiving letters from eastern capitalists inquiring about Nemaha's resources and prospects. Someone even reported a letter from the Keystone Bridge Company of Pittsburg asking for a description of the Missouri at Brownville, the height of the bluffs, and the character of the soil.<sup>31</sup> With a railroad, a bridge, and the future of a metropolis within reach, this was no time to quibble over uncounted votes or the efficacy of spirituous liquors in a democratic election.

Although even the railroad advocates had admitted that only "work of the tallest kind" could get the land grant through Congress before adjournment,<sup>32</sup> they pushed ahead with their plans for a preliminary survey westward from Brownville, and for securing financial aid from Johnson and Gage counties.<sup>33</sup> Another sign of eastern interest in the project came when Thomas Scott, President of the Pennsylvania Central Railroad wrote in April to ask the Brownville Railroad directors about the finances and prospects of their company.<sup>34</sup> In that same month, Joseph Smith, Chief Engineer of the Air Line Railroad, was hired to make the preliminary survey as far as Big Sandy on the Little Blue, and J. W. Blackburn was appointed financial agent of the railroad to raise funds along its route.<sup>35</sup>

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<sup>29</sup>*Ibid.*, February 13, 1868.

<sup>30</sup>*Congressional Globe*, 40th Congress, Second Session, pp. 816, 1257.

<sup>31</sup>*Nebraska Advertiser*, February 20, 1868.

<sup>32</sup>*Ibid.*, December 26, 1867. — Lobbyists from Richardson, Otoe, and Dakota counties were also in Washington seeking railroad grants (*Nebraska Advertiser*, February 27, 1868).

<sup>33</sup>*Nebraska Advertiser*, April 9, 1868; April 15, 1868.

<sup>34</sup>*Ibid.*, April 15, 1868.

<sup>35</sup>*Ibid.*, May 14, 1868.

The first real jolt to the optimism which had hitherto characterized the sponsors of the railroad came on May 20 at the public meeting called to hear the report of these two men. The proposed route—some 95 miles covered in the survey—passed through Nemaha, Johnson, Gage, and Jefferson counties, touching the towns of Tecumseh and Beatrice. The terrain west from Beatrice seemed to present no special difficulties, but the first part was cut by deep north-south ravines which would involve a circuitous route and considerable bridging. Timber was scarce and would probably have to be transported inland, as would coal as the railroad progressed. Smith estimated that a thorough survey would cost \$8,000 and take about seven or eight months to complete. Furthermore, to grade, bridge, iron, and tie the 95 miles would come to the handsome figure of \$625,000.

When Blackburn reported that actual cash on hand and in prospect for the survey alone totalled only \$4,450, the magnitude of the railroad scheme must have struck everyone. The only encouraging part of the report was the prospect that Johnson, Gage, and Jefferson county businessmen would subscribe liberally to company stock, and that the western regions through which the railroad would pass were rapidly being settled.<sup>36</sup>

The serious financial effort the Brownville Railroad would involve when added to the discouraging news from Washington that it would be difficult to secure consideration of the land grant threw a damper on the project. The impeachment of President Johnson, the agitation over the readmission of southern states to the Union, and the powerful lobby of the Central Pacific gave the Brownville grant a low Senate priority.<sup>37</sup> As a member of the Committee on Public Lands, Senator Tipton reported the Brownville Railroad bill on June 5, but no action was taken on it,<sup>38</sup>

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<sup>36</sup>*Ibid.*, May 28, 1868.

<sup>37</sup>*Idem.*,

<sup>38</sup>*Congressional Globe*, 40th Congress, Second Session, p. 2856.

and his return home to Brownville on August 3 meant the end of all chance of a federal land grant that year.<sup>39</sup> The failure in Washington meant that the county was released from any requirement to issue the \$350,000 in bonds. Brownville and her railroad had run into the discouraging disparity between buoyant hopes and economic reality. And so, that fall, public interest in railroads concentrated more on those promising greater certainty of completion, like the Atchison and Omaha Railroad moving north or the St. Louis and Nebraska Trunk building southward. There was some interest in a "Great Nemaha Valley Railroad" for Richardson, Johnson, Pawnee, Lancaster, and Seward counties, and occasionally news of the Air Line was still printed.<sup>40</sup> But for the next several months, scarcely anything was done to revive the Brownville, Fort Kearney, and Pacific. It slipped almost completely from public interest which even the impending distribution of state internal improvement lands did little to stimulate.

The measure which provided for the apportionment of these 500,000 acres represented a compromise between competing interests and sections of the State. A variety of formulas has been suggested for their disposal, ranging from flat grants for specifically designated railroad companies to a division of the entire acreage among the first four companies complying with certain conditions.<sup>41</sup> The bitterness of North and South Platte rivalry was heard in the demand that the latter region "*must*" have a railroad and not Omaha alone.<sup>42</sup> Rumors began to circulate early in February to the effect that the lands would be split to provide the Nebraska Trunk Railroad with 100,000 acres; the Nemaha Valley, Midland Pacific, and Yankton and Columbus with 90,000 each; the Brownville, Fort Kearney and

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<sup>39</sup>*Nebraska Advertiser*, August 6, 1868.

<sup>40</sup>*Ibid.*, October 24, 1868; November 19, 1868; December 31, 1868.

<sup>41</sup>*Ibid.*, February 4, 1869; February 11, 1869.

<sup>42</sup>*Ibid.*, February 4, 1869.

Pacific with 50,000, and the Burlington and Missouri with 32,000 acres.<sup>43</sup>

The final law represented about the best possible amalgamation of public interest and private initiative that could have been devised. Sponsored by A. S. Stewart of Pawnee County it provided, briefly, that 20,000 acres of land would be given to a railroad company for each ten miles of line completed within one year of the passage of the act, with a maximum for any one line fixed at 100,000 acres, except for those which had received a federal land grant. The latter were limited to 50,000 acres. In all cases, the railroad would have to be fully graded, ironed, spiked and bridged before getting state acreage.<sup>44</sup>

There was no great rush to revive the scheme for a western railroad in Brownville despite the offer of state lands, although the *Advertiser* urged the public to act quickly in constructing the required ten miles of railroad lest ". . . a golden opportunity for the development of the South-half of the state is lost to us, irretrievably gone."<sup>45</sup> Perhaps precipitate action was checked by the awareness that a state grant would pay only half the construction costs of a western connection, and that 200 miles would have to be constructed before it could become a paying proposition.<sup>46</sup>

But the Brownville Railroad still had a powerful friend in Washington where Senator Tipton on March 19, 1869, introduced another bill designed to secure a land grant for the railroad.<sup>47</sup> This measure, although actually

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<sup>43</sup>*Ibid.*, February 11, 1869.

<sup>44</sup>*Laws, Joint Resolutions and Memorials . . . of the Legislative Assembly of the State of Nebraska* (Omaha, 1869), pp. 153-157. — The bill may be traced in *House Journal*, Fifth Session and First Regular Session (Omaha, 1869), pp. 138, 146, 149, 165, 177-78 179, 212, 223, and 274. The Senate passed the House measure without amendments; cf. *Senate Journal* for the same session (Omaha, 1869), pp. 198, 211, 224-25.

<sup>45</sup>*Nebraska Advertiser*, February 25, 1869.

<sup>46</sup>*Idem.*

<sup>47</sup>*Congressional Globe*, 41st Congress, First Session, p. 151.

framed to assist the Midland Pacific Railroad, in its ultimate form included, as well, a grant for the Brownville, Fort Kearney and Pacific—proof of the extent to which that line and its promoters successfully attached themselves to more popular causes between 1869 and 1871, and shared in their victories. Another illustration of this technique is found in the veritable *coup* effected as a result of public interest in the St. Louis and Nebraska Trunk Railroad. It will be recalled that this line had evoked considerable enthusiasm in the winter of 1868, and in May of the following year it secured not only a right of way through Brownville, but also a resolution from a railroad rally in the city that the county loan \$150,000 in bonds to assist it. Similar meetings at Hillsdale and Nemaha City urged a direct donation.<sup>48</sup> At the end of the month delegates from Brownville, Hillsdale, Nemaha City, St. Deroine, Benton, Aspinwall and Peru petitioned the county commissioners to offer the Trunk Railroad \$1,500 for each mile graded; an equivalent sum for each mile bridged and tied; \$1,000 for each mile ironed; and the balance, if any, of \$132,000 in twenty year, eight percent bonds when the first train rolled over the tracks.<sup>49</sup>

The manner in which the Brownville, Fort Kearney promoters managed to capitalize on this movement is not clear, but on June 4 George Adams and George King, representatives of still another Quincy syndicate interested in a continental railroad, attended a railroad meeting in Brownville. Present at the same time were the local sponsors of the Brownville Railroad, and when the meeting was over it had been persuaded to petition the county commissioners not only for \$132,000 to assist the Trunk Line, but also \$118,000 as well to help the Brownville, Fort Kearney and Pacific.<sup>50</sup> The commissioners speedily agreed to a referendum, and fixed July 24 as its date.<sup>51</sup>

<sup>48</sup>*Nebraska Advertiser*, May 6, 1869; May 13, 1869; May 20, 1869.

<sup>49</sup>*Ibid.*, May 27, 1869.

<sup>50</sup>*Ibid.*, June 10, 1869.

<sup>51</sup>*Ibid.*, June 21, 1869.

In this new opportunity, Brownville and Nemaha County began to broaden the sources of strength for a western connection. The sources looked impressive, for the capitalists behind the Quincy, Missouri and Pacific Railroad which Adams and King represented stood ready to subscribe \$100,000 to the Brownville, Fort Kearney under two conditions: 1) that the directors of the line raise an equivalent amount, and 2) that the county approve the proposed \$118,000 bond issue. If these conditions were met, the Quincy investors would contract immediately for the construction of the ten miles of line west from Brownville in a race to qualify for state lands under the law by February 15, 1870.<sup>52</sup>

This offer of assistance that would at least begin a project already too long delayed made the July election of special urgency, demanding exertions from everyone convinced of the commercial potentialities of Brownville. To the *Advertiser*, it was clear that:

All other matters sink into petty insignificance, in comparison to this great work. . . much of our destiny hangs in the balance; and a strong persistent united effort should be made to decide it in our favor next Saturday; and if successful, the coming month will see work commenced on the road. Work!<sup>53</sup>

The election was a complete success for the railroad interests with the enthusiasm of Brownville once more carrying the day before the opposition. The completeness of the victory first shown by the unofficial count of 434 endorsements to 202 against included 410 from the county seat.<sup>54</sup> Through the alliance with the Quincy investors the local railroad forces had carried all before them, and this time without the dangerous disqualification making the bond issue contingent on a federal land grant. The closeness of the alliance was emphasized by the appearance of

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<sup>52</sup>*Ibid.*, July 15, 1869.

<sup>53</sup>*Ibid.*, July 22, 1869.

<sup>54</sup>*Ibid.*, July 29, 1869.

Brownville and Quincy promoters together in Nebraska and Missouri at fund-raising campaigns, and it was rumored that consolidation of the two lines was only being delayed to maintain the eligibility of the Nebraska company to state lands.<sup>55</sup>

The next year was filled with a rush of activity, chiefly financial, to assure the completion of the line. A slight flurry of excitement was caused at first by rumors that the chief engineer of the North Missouri and Trunk railroads had reported that arable lands in Nebraska existed only within fifty miles of the Missouri, thereby ascribing as worthless the state lands the Brownville Railroad would secure. This depressing story was quickly laid to rest by a denial from its alleged originator that he had ever said anything of the sort, and so the survey work proceeded confidently westward.<sup>56</sup> Merchants in Brownville began attracting attention to their advertisements by heading them with the words "The Railroad is Coming," or "The Railroad Ahead."<sup>57</sup> The close of the year saw the route of the Brownville, Fort Kearney finally settled. It would move west to the Nemaha County line, then to Beatrice via Tecumseh, across the Little Blue and then out onto the prairie along the Republican River.<sup>58</sup> Popular support of the railroad manifested itself in a new movement demanding that Brownville City subscribe \$100,000 to the "Quincy, Brownville and Pacific".<sup>59</sup> On January 20 and 29 Brownville Precinct and City voted respectively \$100,000 and \$60,000 to the capital stock of the Brownville, Fort Kearney and Pacific.<sup>60</sup> This brought the total of public commitments to the peak of \$278,000—no trifling sum in any age considering that there was still nothing physical to show for it.

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<sup>55</sup>*Nebraska Advertiser*, August 5, 1869; August 26, 1869; November 11, 1869.

<sup>56</sup>*Ibid.*, August 12, 1869; August 26, 1869.

<sup>57</sup>*Ibid.*, October 7, 1869.

<sup>58</sup>*Ibid.*, November 18, 1869.

<sup>59</sup>*Ibid.*, December 16, 1869.

<sup>60</sup>*Ibid.*, February 3, 1870.

After these successes in Nebraska, the main field of activity shifted to Washington. It will be remembered that Senator Tipton had introduced a bill, S. 168, on March 19, 1869 to aid the Midland Pacific Railroad in the construction of a line from Lincoln to Denver via the Republican River.<sup>61</sup> A little more that a year later on March 21, 1870, the solidarity of the new Brownville-Quincy alliance was demonstrated when Senator Lyman Trumbull of Illinois presented a petition from citizens of Quincy asking incorporation and a land grant for a railroad to be built from "Brownsville" via the Republican River, to Denver.<sup>62</sup>

Senator Tipton reported S. 168 with amendments on April 1, and April 8, 1870, but on April 29, when it was the next piece of legislation on the Senate calendar, it was passed over without consideration.<sup>63</sup> The bill, however, was not to meet the fate of postponement which had been so disastrous for the railroad in 1869. An agreement had been worked out between representatives of the Brownville, Fort Kearney, and Pacific and the Midland Pacific railroads, with the powerful Central Pacific lobby which was interested in a route through southern Nebraska northward for a junction with the Union Pacific. This bargain, and the success of the Nebraska roads, was seriously imperiled when Senator John M. Thayer of Omaha bitterly attacked the Central Pacific bill which came up for consideration on June 10. Thayer at first criticized the measure as an infringement on the rights of the two southern Nebraska railroads, but when Tipton assured the Senate that neither of those lines had any objection to the Central Pacific bill, Thayer swiftly raised others.<sup>64</sup> He pointed out that the measure reserved the alternate even numbered sections of land for that railroad, while Tipton's bill would dispose of the odd numbered sections to the Nebraska com-

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<sup>61</sup>See above, p. 248.

<sup>62</sup>*Congressional Globe*, 41st Congress Second Session, p. 2084.

<sup>63</sup>*Ibid.* pp. 2332, 2515, 3095.

<sup>64</sup>*Ibid.*, pp. 4286-4287.



panies, thereby "really giving away a whole belt of land, leaving none to be disposed of by the government to actual settlers within the State of Nebraska, if I understand it correctly."<sup>65</sup>

The Omaha senator skillfully joined the hostility of the homesteader to railroad land monopolies and local prejudice by emphasizing that the Central Pacific was not a Nebraska corporation. On June 11 he attacked the proposed grant to that line as neither in the public interest nor required by the people or the State of Nebraska, and again he declared that the Midland Pacific and Brownville, Fort Kearney had first claim to any grant in Nebraska, "in preference to foreign companies."<sup>66</sup> In vain did Tipton show that the Nebraska roads would be protected by an amendment to the Central Pacific bill which would limit the right of way of that line in the Republican valley to no more than twenty-five miles.<sup>67</sup> Thayer would not be appeased. "I claim for our roads," he repeated, "the odd sections. I claim then the even sections for settlement, for homesteads, for preemptions."<sup>68</sup>

When Senator Harlan of Iowa pointedly asked Thayer whether the latter was not opposing the Central Pacific as a possible threat which might divert freight southward from the Platte bend away from Omaha toward St. Louis, the Nebraskan tartly insisted that he spoke for all the state—not simply Omaha—and particularly for its southern section. To support his objections to the Central Pacific he read a letter on the floor of the Senate from Governor David Butler of Nebraska in which the latter condemned the Central Pacific bill, while endorsing the claims of the Brownville and Midland Pacific lines.<sup>69</sup> What evidently neither Thayer nor Butler could see—or wanted to see—was that such obstinancy threatened the entire bargain between

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<sup>65</sup>*Ibid.*, p. 4287.

<sup>66</sup>*Ibid.*, p. 4337.

<sup>67</sup>*Ibid.*, p. 4338.

<sup>68</sup>*Congressional Globe*, 41st Congress, Second Session, p. 4338.

<sup>69</sup>*Ibid.*, p. 4340.

the Nebraska roads and the Kansas company. If the latter failed, what chance had the Brownville, Fort Kearney or the Midland Pacific?

The decision came only with one of the most frank declarations of economic and sectional allegiance that had ever been made in the Senate when Tipton arose to declare that his own neighbors were officers of the Brownville, Fort Kearney and Pacific and that he alone—not Thayer or Butler—was their spokesman.

Their representative, with a power of attorney to represent them here, is in the gallery of this Senate. I represent their interests on this floor, and I say they have no war against the Central Branch Pacific railroad. The president of the Midland Pacific, which will form a junction with us in the back country on our way to Denver, is in this city and has no war against that road. He desires a fair chance in crossing that road, or where they cross ours, whichever may be the first line built.

Then, I say, that I cannot allow either my colleague or any other gentleman to stand here and declare he represents the interests of the South Platte country. I am a representative of the interests of the South Platte country."<sup>70</sup>

Tipton won. The Senate approved the Central Pacific grant that same day, and it carried his amendment limiting that railroad in the Republican valley to no more than twenty-five miles of passage.<sup>71</sup> Two days later, on June 13, 1870, the other half of the bargain was kept when Tipton's own bill, S. 168, granting alternate odd sections of land, ten to the mile, to the Midland Pacific, and the Brownville, Fort Kearney and Pacific, all the way to Denver, was approved by the Senate. In view of the future relations between the two roads, the degree of cooperation between them provided for in the bill was truly remarkable. Both were to operate over a joint track from a point not further west than the sixth principal meridian, with stock in the consolidated line equally distributed between the two companies. Discrimination in fares, freights, or rolling stock

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<sup>70</sup>*Ibid.*, p. 4342.

<sup>71</sup>*Ibid.*, p. 4349-4350.

against the Midland Pacific branch to Lincoln or the Brownville, Fort Kearney to Brownville was prohibited. The later was also given the right to construct a bridge across the Missouri to meet any line terminating on the east bank of the river. With only slight changes in wording, the bill passed for which Tipton and the Nebraska lobby had labored so vigorously.<sup>72</sup>

The success in the Senate with its magnificent promise of nearly 6,000,000 acres evoked new bursts of enthusiasm for the dream which at last seemed to be materializing. In Brownville, the company circulated a glowing statement of its prospects which included not only the impending grant, but an actual donation by Johnson County of a \$100,000 bond issue to rush the road to completion.<sup>73</sup> On October 4, 1870, more than three years after the company for a railroad to the west had been organized, a throng of citizens, including the children freed for the day from school, witnessed the ground breaking ceremonies for the Brownville, Fort Kearney and Pacific. With a firing of salutes by the gun squad of the city, Hiram Alderman, oldest citizen of Nemaha County, turned the first spade of sod. He was followed by Senator Tipton, Representative John Taffe (who was sponsoring the land grant in the House), railroad president H. C. Lett and County Commissioners McGee and Ritter. That same week about a dozen teams arrived in Brownville to begin construction; the challenge to Chicago as the center of Middle Western commerce had begun.<sup>74</sup>

During the next three months, as always, close liason was maintained with the Quincy, Missouri and Pacific directors on whose line work had started the preceding February; ties were secured and the grading financed by

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<sup>72</sup>*Ibid.*, pp. 4385-4386.

<sup>73</sup>*Statement of the Brownville, Ft. Kearney and Pacific Railroad Company* (Brownville, 1870), p. 1. — This pamphlet also contains a map of the projected route of the railroad.

<sup>74</sup>*Nebraska Advertiser*, October 6, 1870.

the bonds; further land condemnations were made along the proposed route and a veritable shanty village of boards and tents rose at the mouth of Honey Creek, the ravine north of Brownville through which the railroad would proceed westward from the Missouri River.<sup>75</sup> In December the *Advertiser* reported "about two hundred hands and teams . . . making the 'dirt fly'." Thousands of railroad ties were being delivered along the track, and work was already progressing on the second ten miles of grading.<sup>76</sup> On January 28, 1871, the State Legislature urged Congress to approve the land grant which the Senate had passed the preceding June, and in March it extended to five years the time limit within which the ten miles of railroad would have to be constructed in order to qualify for state lands under the Act of 1869.<sup>77</sup>

But when no encouragement came from Washington, work virtually ceased at Honey Creek. In May, dissatisfaction against the "general statements and indefinite future promises" of the railroad directors was voiced in Brownville, and even the *Advertiser* boldly declared that the leaders of the company had "made a great mistake if they supposed the township and city bonds were voted merely to pay them large salaries to support them in idleness."<sup>78</sup> An interview with H. C. Lett, president of the line and with Henry M. Atkinson, business manager, revealed that the company was in severe financial straits. Its total cash assets from private subscriptions, precinct bonds and coupons came to only \$11,000, while \$51,660 had been paid out. In a public letter, Lett declared that too brief a time had elapsed since the bond issue to expect

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<sup>75</sup>*Ibid.*, February 24, 1870; November 17, 1870; November 21, 1870. — The route as shown by property condemnations may be traced in *Deed Book 6*, pp. 636-640, and *Deed Book 6*, pp. 1-9, County Clerk's Office, Auburn, Nebraska.

<sup>76</sup>*Nebraska Advertiser*, December 8, 1870.

<sup>77</sup>*Laws, Joint Resolutions and Memorials . . . of the Legislative Assembly of the State of Nebraska* (Des Moines, 1871), pp. 129-130, 233-234.

<sup>78</sup>*Nebraska Advertiser*, May 25, 1871.

spectacular results, and that all needed funds up to March, 1871 had been advanced by the company directors who at one time had incurred personal obligations as high as \$15,000 to pay the laborers for the first ten miles of grading, now nearly completed. He asserted that not a single officer of the railroad had received a penny of salary.<sup>79</sup>

This rejoinder to the criticism did something to lessen the attack, but it still did not yield a railroad, which was what Brownville wanted. But the directors were evidently seeking a solution, and this time they found it in the long rumored interest of financial groups in Ohio and Indiana in the new western railroad. On September 18, 1871, the Brownville, Fort Kearney and Pacific Railroad underwent a virtually complete reorganization when it contracted with Benjamin E. Smith and William Dennison of Ohio, and with Joel N. Converse of Indiana to complete the construction of the line.<sup>80</sup>

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<sup>79</sup>*Idem*, June 1, 1871.

<sup>80</sup>Material on the nature of the construction contract and the financial considerations involved is drawn, in the absence of company books, from two legal sources: *Case 901, DeWitt Clinton Shellabarger vs. Midland Pacific R.R. Co. et al*, filed January 21, 1876. (Nemaha County District Court, Auburn, Nebraska), and "Thomas, Trustee, v. The Brownville, Fort Kearney & Pacific Railway Co. and others", in 2 *Federal Reporter* 877-881 and 109 *U. S. Reports*, 522-527. Wherever the evidence offered in these sources is disputed by any of the contending parties, or is unsupported by contemporary company records accepted as valid by the reviewing court, its doubtful validity is indicated in this paper.

Smith, Dennison and Converse were associates in the Columbus, Chicago and Indiana Central Railroad—a consolidated line 588 miles long, and a subsidiary of the Pennsylvania Railroad. (Henry V. Poor, *Manual of the Railroads of the United States for 1869-70* [New York, 1869], p. 394.) Joel N. Converse was the descendant of a Vermont family that had emigrated to Ohio where he was born in 1820. He graduated from Starling Medical College at Columbus in 1845 and practiced medicine until 1852 when failing health turned him toward agriculture and then railroad investment. When the Union and Logansport Railroad Company was organized he became its vice president, and eventually its president. In 1871, he was still a director of the C.C.&I.C. Railroad with which the Union and Logansport had been united. He was also at one time president and superintendent of the former road, according to Edmunds. (Cf. below). In 1869, however, he ceased operation of the C.C.&I.C. and

The award of the construction contract was made by the directors of the company in consideration of another agreement, signed in Columbus, Ohio, on the same date. This relieved the directors of the Brownville, Fort Kearney and Pacific and five other individuals holding shares in the company from all obligations to meet any further assessments or payments on the stock held by them. Instead, Smith, Dennison, Converse and their associates in return for the construction contract agreed to meet all payments on the stock held by these aforementioned individuals, provided that it was transferred to them. At the same time the construction syndicate was to receive from the railroad company ". . . all of the property owned and assets, subscriptions etc. of said company . . ." The total amount of the stock transfer to the syndicate by these arrangements amounted to \$16,500 out of \$41,000 worth represented by individual subscriptions to the company.

This extraordinary arrangement, which was later to be attacked as a betrayal by the directors of the stockholders in consideration of a virtual bribe, was surrounded by no secrecy. Early in October the cheering news was

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came to Nebraska where he assumed the superintendency of the Midland Pacific Railroad at Nebraska City, a position which he still held on entering the Brownville, Fort Kearney and Pacific in September, 1871. (A. C. Edmunds, *Pen Sketches of Nebraskans* [Lincoln, 1871], pp. 135-136; *Portrait and Biographical Album of Lancaster County, Nebraska* [Chicago, 1888], pp. 166-172.)

William Dennison, another member of the syndicate, was an early organizer of the Republican Party in Ohio. He was governor of that state from 1859 to 1861, and Postmaster-General in Lincoln's cabinet during the Civil War, a position he quit in 1866 over dissatisfaction with President Johnson's policies. Although a keen politician, he was avidly interested in business, and as a pioneer railroad promoter in Ohio, he was a leader in the Hocking Valley and the Columbus and Xenia railroads, the latter line eventually consolidating with the C.C.&I.C. (*Dictionary of American Biography* [New York, 1930], V, 241-242.)

Benjamin E. Smith was the president of the C.C.&I.C. at the time when he became interested in the Brownville, Fort Kearney and Pacific. He was later to become president of the Quincy, Missouri and Pacific, and of the Nebraska Railway Company. He was also president of the Midland Pacific Railroad. (See below and *Poor's Manual*, 1871, 1872.)

announced the "toot" of actual, moving, living trains will be heard in our city within the next sixty days," and the company directors who had been so severely criticized before were praised as those who now had saved the cherished dream of greatness.<sup>81</sup> With J. N. Converse as its chief supervisor, work was quickly resumed at Honey Creek.<sup>82</sup> Contracts were let for bridges over the route, and teams began going up the main street of Brownville with huge piles for their construction. Four carloads arrived at Phelps, across the river, with timber for the railroad, and a locomotive was reported to be on its way from Pennsylvania.<sup>83</sup>

In November Converse visited Brownville and announced that 3,600 bars of iron for the railroad had left St. Louis for Phelps City, and that the balance necessary to cover the first ten miles of grade would probably arrive at the latter point shortly. A barge had been purchased from the Burlington and Missouri Railroad, he told his audience, to ferry the locomotive to the construction site, and track laying, he declared, would begin around the middle of the month. On November 13, twenty-five carloads of the iron for the railroad reached Phelps City, and it was reported that eight or nine cars daily were expected. Finally on November 28, 1871, the great day arrived: Superintendent Atkinson, at two o'clock in the afternoon, drove the first spike into the tie that held the first rail of the Brownville, Fort Kearney, and Pacific.<sup>84</sup>

Track laying went forward at a considerable rate. By the middle of December ten miles of the railroad were declared to be in running order, and on December 29, 1871, just a little more than four months after Converse had entered the company, it received 19,989.12 acres of state

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<sup>81</sup>*Nebraska Advertiser*, October 5, 1871.

<sup>82</sup>*Ibid.*, October 12, 1871.

<sup>83</sup>*Ibid.*, October 26, 1871.

<sup>84</sup>*Ibid.*, November 9, 1871; November 16, 1871; November 28, 1871.

land under the Act of 1869.<sup>85</sup> Indicative of the control now exercised over the railroad by the construction syndicate was the transfer to them by President Lett of the entire grant on January 1, 1872 for the nominal sum of \$25,000.<sup>86</sup>

The happiness of the occasion was officially expressed by the County Commissioners who congratulated the construction firm of Converse, McCann and Company, and transmitted to them \$40,000 in Nemaha bonds for the work already completed.<sup>87</sup> For its readers and the public generally the *Advertiser* declared:

Our citizens have full confidence in the honesty of purpose of Converse, McCann and Co., in taking hold of our road, and in their ability and desire to extend it westward at a rapid rate, and we as citizens must give them our earnest cooperation, both in sympathy and such means as we have in our power.<sup>88</sup>

The jubilation of the city and the acceptance of the leadership of the Converse group on the successful completion of the first ten miles of railroad tended to remove any doubt that that leadership was bitterly resented from the start. The contrary is true, for the Middle Western group had effected what too many years of promises by local and Missouri financiers had failed to achieve: they had put down track; they had won lands from the state. The new leaders moved into full command on April 1, a little more than a month after President Lett and Superintendent Atkinson with some twenty guests made the

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<sup>85</sup>*Deed Record* (Internal Improvement Lands, Lincoln, Nebraska, I, 133-138.—Of this grant, 1,547.90 acres were deducted for non-confirmation. See *Messages and Proclamations of the Governors of Nebraska* (Lincoln, 1941), I, 419.

<sup>86</sup>*Deed Book "A"*, pp. 21-25, County Clerk's Office, Red Cloud, Nebraska.—These lands were in present day Webster, Franklin, Gosper, Furnas, and Harlan counties.

<sup>87</sup>*Nebraska Advertiser*, January 11, 1872.—Dwight J. McCann was the organizer and president of the Nebraska City National Bank. (Edmunds, *op. cit.*, pp. 480-481.)

<sup>88</sup>*Nebraska Advertiser*, January 11, 1872.



"first grand excursion" over the railroad.<sup>89</sup> At that annual election of officers, the only members of the Nebraska sponsors who retained a directorship in the company were Lett, Atkinson and A. J. Ritter. Converse, Smith, Dennison and their ally from Nebraska City, D. J. McCann, controlled the other four positions on the board. The basis of their control, insofar as it rested on stock, was probably based on a considerable block transferred to them by the old board of directors of the company the preceding October (1871).<sup>90</sup>

The new leaders of the railroad, aware that the election of July 24, 1869 required them to complete their line by the same date in 1872 in order to receive the county bonds, succeeded in securing an extension of time to November 1, although there was some criticism of the company as having already had enough time to complete its route through the western half of Nemaha. One critic in particular wrote to the *Advertiser*, and in signing himself "Legion" declared that the citizens had seen the first ten miles for which they had paid \$40,000 in bonds, and that to them it looked like "a rough road to travel. Three ties to a rail and nary gravel."<sup>91</sup> But to this sour note the extension made a pleasant reply, as did the approval by Johnson

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<sup>89</sup>*Idem*, March 7, 1872—The question of whether the railroad ever ran a train intrudes at this point. Morton (*op. cit.*, p. 61) mentions that, "over it, with considerable timidity and no less difficulty, an engine and a few cars several times made trips." The *Advertiser* of October 17, 1872, in describing work on the railroad mentioned that "The locomotive proves an able assistant." In December, 1871, President Lett reminded stock subscribers that some \$200,000 has been paid out for engines and other rolling stock. (*Nebraska Advertiser*, December 14, 1871). I have been unable to confirm the "ox-drawn train" mentioned at the beginning of this paper, but Poor's *Manual of the Railroads of the United States for 1873-74* (New York, 1873) lists one locomotive engine, one passenger car, and eleven freight cars as rolling stock of the line (p. 150).

<sup>90</sup>The extent of this transfer—whether it was of 1200 or 12,000 shares—depending on whether the company books were falsified is doubtful. Cf. below and *Case 901*.

<sup>91</sup>*Nebraska Advertiser*, April 11, 1872; May 9, 1872; May 30, 1872.

County of a \$100,000 bond issue on June 11 to assist the progress of the western line.<sup>92</sup>

The summer and autumn of that year saw reassuring evidence of substantial work. Throughout August the saw-mill on Sonora Island in the Missouri was going "full blast" cutting railroad ties, and that same month a site was chosen near the levee in Brownville for a depot. Ten new cars and an engine were reported in September to be at Nebraska City ready for the line, and by the middle of October the grading had been completed to the western limit of the county. In November Atkinson left for the east to direct the shipment of English iron for the railroad which reportedly had been carried by five ships to New Orleans, from which point it would go to St. Louis and then to Brownville.<sup>93</sup> But all this activity came to a sudden halt in the eruption of a bitter quarrel between Converse and the county commissioners over the failure of the company to complete the laying of its road to the county line by November 1.

Converse declared that he had been given to understand that he would receive a grace period extending to the beginning of the new year, and that he had counted on that understanding when he contracted for the construction of the road bed at so much per mile, payable in public bonds he hoped to receive. With the completion of the road bed by January, 1873 as far as Tecumseh, Converse demanded \$30,000 in bonds from the Nemaha commissioners. When they refused, on the ground that he had not met the required deadline, the work halted with Converse declaring that not a single bar of iron would be laid over those thirty miles unless the bonds were issued.<sup>94</sup>

The quarrel dragged on for over a month with considerable bitterness expressed against Converse for threat-

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<sup>92</sup>*Ibid.*, June 13, 1872. None of Johnson's grants were implemented with funds.

<sup>93</sup>*Ibid.*, August 1, 1872; August 22, 1872; September 12, 1872; October 10, 1872; October 17, 1872; November 14, 1872.

<sup>94</sup>*Ibid.*, January 23, 1873.

ening to abandon the project, and at the end of February it was only a patchwork peace that was arranged. Converse agreed then to pay almost the entire grading bill, which amounted to \$80,000, through bonds of his own and the \$40,000 in bonds which the company had received for the first ten miles completed in December, 1871. A balance of \$16,500 was left unpaid which Converse hoped the county would assume for him with bonds of its own. It will be remembered that \$118,000 had been voted for the Brownville, Fort Kearney in the election of July, 1869. Since a residue of \$78,000 still was available, Converse asked that the \$16,500 be paid from that and the remainder placed with trustees chosen by the commissioners. This sum, in turn, he suggested, should be delivered to him by the trustees as soon as iron had been laid throughout the railroad route in Nemaha County.<sup>95</sup>

The trustee proposal was not agreed to until July 8 when the commissioners turned over the full \$78,000 in bonds (apparently the county had not paid the balance of the grading bill) to John L. Carson and William Hoover who were to deliver them to the company "when the road is completed through the county and regular trains running thereon." A new deadline for its completion was fixed at March 1, 1874.<sup>96</sup> In the meantime, however, with the company being attacked as another Credit Mobilier and threatened with tax reprisals if it did not complete its line, Converse, through the construction firm of Converse, Smith and Company, placed himself in a position to abandon the whole road whenever he desired. In consideration of a promise by Converse, Smith and Company to complete the railroad to the west border of Gage County, there was delivered to the construction company by the Brownville, Fort Kearney and Pacific Railroad Company—which the Converse directors dominated—on April 21, 1873 a

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<sup>95</sup>*Ibid.*, February 27, 1873.

<sup>96</sup>*Ibid.*, July 10, 1873.

series of 1,500 bonds, each worth \$1,000. These were dated August 1, 1872, and were payable on maturity to Benjamin E. Smith. At the same time, as a security for their payment the railroad company issued Converse, Smith and Company a mortgage on its property.<sup>97</sup> In short, Converse and his associates not only controlled the company through seats on the board of directors, but also possessed a mortgage on its property through their own construction firm. If it is true that the Ohio group had paid out by February, 1873 \$240,000 more than they had received for undertaking the construction of the railroad, the necessity of the mortgage guarantee becomes painfully (i.e., financially) obvious.<sup>98</sup>

Despite the July settlement, Converse showed no eagerness to resume work on the railroad. On the contrary, new obstacles were found as excuses to prevent the extension of the line beyond its ten miles. In December he announced that its completion was contingent on that of the St. Louis and Nebraska Trunk which would also pass through the county. Although Converse admitted he possessed enough resources to complete the Brownville Railroad—despite the financial panic of 1873—he declared it would not be profitable without the Chicago and St. Louis connections the Trunk would provide.<sup>99</sup> This assertion seemed to ignore the fact that the Quincy, Missouri, and Pacific, the long-projected eastern connection, had been making steady progress across Missouri, and indeed had come under the presidency of one of his own associates, Benjamin E. Smith, a director of the Brownville Railroad, and President of the Midland Pacific.<sup>100</sup> As if this were not enough for gloom, a letter appeared in the *Advertiser* from "C" of Lincoln who declared that because of suits pending against the Midland Pacific in Lancaster and Seward counties,

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<sup>97</sup>Case 901.

<sup>98</sup>*Nebraska Advertiser*, February 27, 1873.

<sup>99</sup>*Ibid.*, December 11, 1873.

<sup>100</sup>*Ibid.*, March 13, 1873.

Converse was threatening to dissolve that railroad and all his contingent interests, unless, as seemed unlikely, they were withdrawn.<sup>101</sup>

The delay and rumors of dissolution found reactions of public suspicion and criticism of Converse and the railroad company. On May 14, another attack on the railroad was printed in the *Advertiser*, and as a sign of the condition of the road, it ended bitterly with "POOR BRIDGES AND WASHED GRADE." Toward the end of 1874 a proviso was inserted in the bond proposal advanced for the Midland Pacific declaring that no bonds were to be transferred to that line until actual trains were running between Nebraska City and the Brownville, Fort Kearney junction, four miles north of Brownville.<sup>102</sup>

The most shocking news came, however, at the end of November when it became known that ties and rails of the Brownville, Fort Kearney were being torn up and "borrowed" for the use of the Trunk Railroad on the orders of Converse.<sup>103</sup> This information was confirmed by President Lett who admitted that he had not opposed the removal of the equipment because he was convinced that the line would only be finished if the Trunk were completed first. He produced a letter from Converse in which the latter offered to cease removing the ties and rails if Lett ordered him, but that under the terms of a Peru precinct election of January, 1874 he had to reach that community within sixty days in order to qualify for its bonds. The softening of the river ice in the Missouri had prevented the transfer of needed iron from the opposite shore, and so he was "borrowing" that of the Brownville, Fort Kearney, and Pacific. He assured Lett, "the Brownville, Fort Kearney and Pacific R.R. will not suffer one dollar on my account, nor anybody else."<sup>104</sup> Some comfort in Brownville

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<sup>101</sup>Internal evidence in the letter, and the initial, would seem to point to Jarvis Church as its author.

<sup>102</sup>*Nebraska Advertiser*, November 19, 1874.

<sup>103</sup>*Ibid.*, November 26, 1874.

<sup>104</sup>*Ibid.*, November 26, 1874; December 10, 1874.

was found at first in the installation of a \$5,000 switch at Honey Creek where the Brownville, Fort Kearney tracks would diverge from those of the Midland Pacific building southward,<sup>105</sup> but the proposition to vote \$132,000 in bonds to the Midland Pacific railroad was overwhelmingly rejected, 917 to 485, by the county. Brownville, itself, however, still held to its dream of railroad greatness in casting 311 votes to aid that line.<sup>100</sup>

It was not until August of the following year that it was finally apparent to everyone that Converse and the Ohio group would not complete the Pacific connection—that the first railroad in Nemaha County would, under his direction, be considered as but another of those Nebraska lines constructed hastily after 1869 solely to secure state land benefits.<sup>107</sup> In August, the county commissioners decided on a suit to recover the \$78,000 in bonds which they had deposited with Carson and Hoover as trustees.<sup>108</sup> The commissioners had attempted to secure the bonds from the trustees, but the latter had refused to deliver them, declaring that they held them for another of the defendants, "G. Moodie," under the terms of a private agreement with him. The commissioners accused Carson and Hoover of falsely declaring that the county had transferred the bonds to the railroad, which in turn had sold them to Converse, McCann and Company, by whom they were sold to Moodie. The commissioners admitted that the bonds actually had been issued to the railroad by the county clerk, under the

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<sup>105</sup>*Ibid.*, December 10, 1874.

<sup>106</sup>*Ibid.*, December 24, 1874.

<sup>107</sup>The *Plattsmouth Herald* (no date) listed five which had built no more than the minimum ten miles. (*Nebraska Advertiser*, February 24, 1870.)

<sup>108</sup>Case 887, *Board of County Commissioners of the County of Nemaha, Nebraska, plaintiff vs. Brownville, Fort Kearney and Pacific Railroad. Joel N. Converse, Joseph T. Thomas, Benjamin E. Smith etc. . . . and John L. Carson, William H. Hoover, and G. Moodie, Defendants*, filed December 25, 1875 (Nemaha County District Court, Auburn, Nebraska); *Nebraska Advertiser*, September 2, 1875. References to these bonds hereafter are drawn from the above suit.

authority of the president of the Board of Commissioners, around September 27, 1873, but they questioned the entire legality of the issuance on the ground that the railroad had failed to qualify for the bonds.<sup>109</sup> What the commissioners feared was the eventual transfer of the bonds to innocent investors who would then have legal ground for property bought in good faith. Actually, the commissioners did not even know who the mysterious "G. Moodie" was for whom Carson and Hoover declared they were lawfully holding the bonds.

Converse proceeded to meet this attack by an attempt on October 13, 1875 to consolidate the Brownville, Fort Kearney and Pacific with the Midland Pacific, the new line to be known as the Nebraska Railway.<sup>110</sup> The session of the stockholders at which this maneuver was tried provided a source of litigation for the next eight years.<sup>111</sup> Notice of the plan to consolidate had been posted by the secretary of the company as early as July 22 in the *Advertiser*. The meeting was called to order by Converse on whose motion John L. Carson was elected chairman with C. D. Smith as clerk. The articles of the proposed consolidation were read, and it was unanimously agreed that the county commissioners McKinney, Shook, and Higgins should vote the \$100,000 in stock held by Brownville precinct, and that F. E. Johnson, Mayor of Brownville, should vote the \$60,000 held in the company by the city.

Converse and J. H. Broady, the latter a lawyer and stockholder, were appointed tellers for the vote. The former asked President Lett of the railroad how much stock was held by Converse, Benjamin Smith, and William Denison. Lett said \$120,000 worth, and Converse raised no objection to this figure. Converse told the clerk, Smith,

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<sup>109</sup>Moodie who also witnessed the contract of September 18, 1871, was apparently Gordon Moodie, Secretary of the C.C.&I.C. (See Poor's *Manuals* for 1869 through 1872 under that railroad.)

<sup>110</sup>*Nebraska Advertiser*, October 14, 1875.

<sup>111</sup>*Case 901* has a reproduction of the minutes of the meeting.

to keep a record of the vote which was then taken. Each share at this time was valued at \$100. The final count stated by the clerk showed that only 1,201 votes had been cast for consolidation and 1,613 against. The first figure represented 1,000 held by Brownville precinct, 600 by the city of Brownville, 10 by Broady, two by R. V. Muir, and one by Carson.

The unfavorable result was no sooner announced than Converse claimed the right to vote \$1,200,000 in stock or 12,000 shares. He hunted out the ballot, changed the 1,200 figure to 12,000 and told Smith, the clerk, to change the record and to put that and the proceedings in his pocket. The opponents of the consolidation protested this alteration, and Broady demanded that Converse produce his certificates proving he actually possessed 12,000 shares. Converse refused and as one of the tellers, despite Broady's denials, he declared the consolidation carried. Broady as the other teller secured a motion by the meeting that it had been defeated.

The amazing and unorthodox *coup* staged by Converse drew the angry comment from the *Advertiser* that the meeting "didn't consolidate worth a cent," but the news went all over southern Nebraska that the Brownville, Fort Kearney, and Pacific had ceased to exist.<sup>112</sup> The determination of the county commissioners and of the stockholders opposed to consolidation to fight the new Nebraska Railway Company<sup>113</sup> if it attempted to remove equipment from the Brownville, Fort Kearney, and Pacific was earnestly sworn.<sup>114</sup> The suit against Hoover and Carson for the recovery of the \$78,000 in county bonds was started in December, and when Converse attempted to remove a Brownville, Fort

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<sup>112</sup>*Nebraska Advertiser*, October 14, 1875; October 28, 1875.

<sup>113</sup>At a meeting of Midland Pacific stockholders on October 11, the consolidation had been approved. Articles of consolidation were filed with the Secretary of State on October 15. Benjamin E. Smith headed the new company with Converse as Vice-President. H. C. Lett received a directorship. (Cf. *Case 901*.)

<sup>114</sup>*Nebraska Advertiser*, October 28, 1875.



Kearney, and Pacific bridge across the Nemaha River, the main fight to save the railroad moved from meeting rooms to the courts.<sup>115</sup> An Ohio stockholder named Shellabarger represented the embattled Brownville as plaintiff. Going years back into the history of the company he attacked the issuance of a certificate for 1,200 shares and another for 94 by the directors of the railroad to the Ohio group in October, 1871 as having been made "falsely and fraudulently," and for no consideration whatever. Moreover, he declared that the directors had falsified the company's books to make the 1,200 shares read as 12,000. Furthermore, he declared that he had not received due notice of the consolidation meeting, and in alleging outright fraud as the means by which the consolidation had been effected he asked the court to appoint a receiver for the railroad and its property until the case was settled. He asked that the court restrain by injunction the directors of the new Nebraska Railway Company from using the railroad property or from publicizing its consolidation. Finally, the plaintiff, Shellabarger, sought the complete cancellation of the stock and bonds which he maintained Converse and the Ohio group had secured illegally.<sup>116</sup>

This case was only one phase of the legal tangle in which the unfortunate and paralyzed railroad became enmeshed after October, 1875. It is not the purpose here to trace the legal moves which plagued Brownville and the contending stockholders for nearly eight years before the Supreme Court of the United States rendered the final verdict. The essential fact is that the railroad had ceased to exist: its six miles of track were never replaced, over the remaining four another line operated along the Missouri River, and in 1877 the lease of the Nebraska Railway facilities to the Burlington and Missouri River Railroad doomed to failure all attempts to force the Converse group to restore the line.

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<sup>115</sup>*Ibid.*, January 27, 1876.

<sup>116</sup>*Ibid.*, February 3, 1876; *Case 901*.

The legal action which appears to have become the focal point of the conflict was that begun by the Converse associates to foreclose the mortgage which they held on the railroad property, thereby extinguishing completely any last trace of the line. The old stockholders of the railroad won a brief victory—as they had in securing the injunction through Shellaberger—by securing the consent of the court to intervene in the mortgage case as defendants opposing the action.<sup>117</sup>

In November, 1876, Carson and Hoover had finally surrendered the \$78,000 in bonds for which the commissioners had brought suit, and now, in attempting to block the mortgage foreclosure, the struggle was broadened to cancel not only the consolidation but the \$1,200,000 claimed in stock which Converse had voted, and the \$1,500,000 in mortgage bonds held in trust by another member of the Ohio group, Joseph T. Thomas, a former associate of theirs in the C.C.&I.C. Railroad.<sup>118</sup> The first real victory came in May, 1880 when the Circuit Court held that the holders of the mortgage had no valid claims under it since those were completely dependent on the validity of the construction contract signed in September, 1871. This, the court held, was clearly tainted with fraud on two grounds: first, two of the railroad directors who awarded the construction contract were also members of the construction syndicate, and, second, the terms of the stock transfer which accompanied the award had connotations of bribery.<sup>119</sup>

The case was appealed, and in December, 1883, the Supreme Court of the United States reversed the verdict of

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<sup>117</sup>"Thomas, Trustee, etc." (2 *Federal Reporter*, 877-881),

<sup>118</sup>*Idem*. The *Nebraska Advertiser*, December 29, 1881, contains a letter from Broady, lawyer in the case, explaining the issues at stake. On Joseph T. Thomas, see Poor, Henry, *Manual of Railroads of the United States for 1869-70*, (New York, 1869), p. 394 where he is listed as a director of the C.C.&I.C. with Smith, Converse, Dennison and Moodie.

<sup>119</sup>"Thomas, Trustee, etc." (2 *Federal Reporter*, 877-881.) The directors were not identified.

the lower tribunal. It agreed with the latter that the financial arrangements of September, 1871, were clearly immoral, but it refused to order a cancellation of the mortgage bonds on the ground that they had passed into the hands of an innocent party, the Burlington and Missouri River Railroad which had received them in purchasing the Nebraska Railway Company. "The bonds . . . cannot be enforced unless they are negotiable instruments in the hands of innocent holders for value."<sup>120</sup> Since the B&M was such an innocent holder, the bonds were valid against the Brownville, Fort Kearney and Pacific and its assets, if any. Furthermore, the Supreme Court allowed a claim by the plaintiff, Thomas, for \$205,947.66—the cost of construction work done beyond the value of the bonds, and authorized the sale of the railroad to cover the amount. Almost as if to make the verdict more bitter, the court noted that the old stockholders had no right to intervene in the foreclosure of their line since the original parties to the sale had been in agreement. When the court allowed them to step in as defendants, the supreme tribunal declared, it did so without warrant. The court did not note in this severe decision that the original parties were actually one and the same, belonging to the old C.C.&I.C. combination.<sup>121</sup>

It could hardly be said that the decision of 1883 finished the Brownville, Fort Kearney and Pacific Railroad; as has already been pointed out; that colorful and discredited project had been long since abandoned. But the effect of the decision on Brownville itself was another matter, perhaps most succinctly put by J. Sterling Morton who declared in describing the valid financial railroad debt of the city:

The result was that taxes in Brownville ran up to 17 cents on the dollar. Brownville property was undesirable. No one

<sup>120</sup>"Thomas, Trustee, etc.", (109 *U. S. Reports* 524).

<sup>121</sup>The full decision is found in 109 *U. S. Reports* 524.

demanded it. Its value declined with great velocity. . . . The county seat was removed, mercantile houses and banks deserted the townsite, until in some of the best buildings on the main street bats and owls found their most secluded and comfortable roosting places. Grass grew in the streets that had been resonant with the rumble of farm wagons and brisk with the traffic of a rich and prosperous county.<sup>122</sup>

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<sup>122</sup>Morton, *op. cit.*, p. 61.