

RAMSEY COUNTY
History
A Publication of the Ramsey County Historical Society

Growing Up in St. Paul
Random Recollections
of Grace Flandrau

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Fall 2008

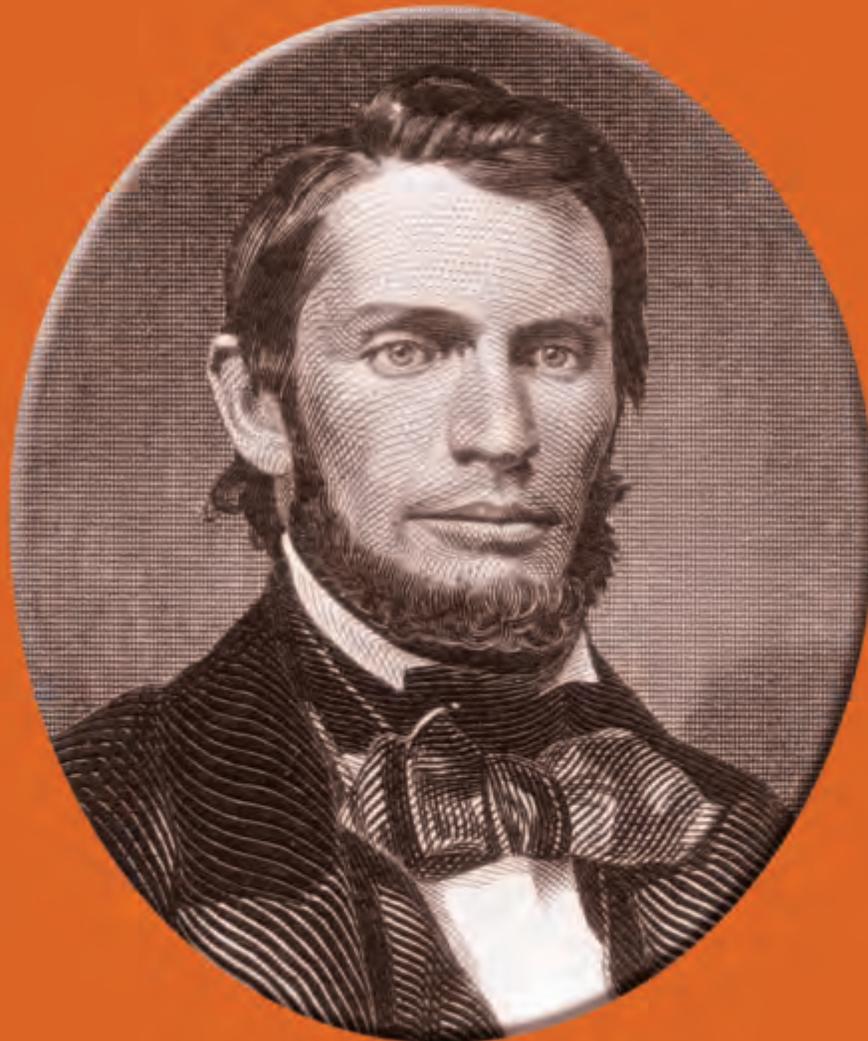
Volume 43, Number 3

Pith, Heart, and Nerve

Truman M. Smith: From Banker to Market Gardener

Barry L. and Joan Miller Cotter

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An engraved portrait of Truman M. Smith from about 1857 by the Rawdon, Wright & Hatch Company. Engraving courtesy of the Minnesota Historical Society.

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RAMSEY COUNTY History

Volume 43, Number 3

Fall 2008

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ADOPTED BY THE BOARD OF DIRECTORS ON DECEMBER 20, 2007:

The Ramsey County Historical Society inspires current and future generations
to learn from and value their history by engaging in a diverse program
of presenting, publishing and preserving.

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A Message from the Editorial Board

Today’s headlines blare news of bank failures and foreclosure notices. But in October 1857, when New York banks failed, there were no federal bailouts and no financial “safety nets”: eighty percent of St. Paul businesses went under. Truman Smith, who had pinned his hopes on fervent land speculation in the young frontier town, lost his bank and later, his house. In this issue, Barry L. and Joan Miller Cotter tell Smith’s harrowing story. But stay tuned for a future issue of our magazine, in which Smith “reinvents” his career. And check out Minnesota Public Radio’s website at mpr.org, where the archives (search “Truman Smith”) contain Dan Olson’s July 2008 report on the Panic of 1857, based in part on the Cotters’s research.

Also in this issue: John Lindley’s look at Crawford Livingston’s role in railroad financing in the 1880s; a personal story of Blair Klein’s 1950s road trip with his aunt, writer Grace Flandrau, in her green Packard sedan; and Steve Trimble’s review of four books celebrating 150 years of Minnesota statehood.

Anne Cowie,
Chair, Editorial Board

“Mr. Livingston . . . Had the Tenth”

An Episode in Minnesota Railroad Building

John M. Lindley

On October 3, 1883, the Minnesota Supreme Court published its opinion in the case of *James H. Weed et al. vs. Little Falls & Dakota Railroad et al.* Lawsuits involving railroads were common at all state and federal levels in the courts of the United States by the 1880s. James H. Weed and the other plaintiffs in this case had initiated their legal action against the Little Falls & Dakota Railroad (LF&D) and the other defendants in October 1881. The plaintiffs had asked the Minnesota courts to issue an injunction against the payment of bonds, stock, and land by the LF&D to DeGraff & Company, a St. Paul business with which the LF&D had established a contract to build the railroad. On the surface, this case appeared to be a dispute over payment for the construction of the LF&D. In fact, the dispute was much more complicated because it was essentially an argument over who would profit from building the LF&D.¹

In addition to these legal issues, *Weed vs. Little Falls & Dakota* also sheds light on Crawford Livingston and his role in the financing of the LF&D. In writing the opinion for the court in this case, Associate Judge Daniel A. Dickinson summarized the prior history of the case, which had been tried in the Ramsey County District Court before Judge Hascal R. Brill. In his recitation of the facts of the case, Judge Brill had written that one of the defendants in the case, Henry Villard, who at the time was the president of the Northern Pacific Railroad, had paid \$90,000 to acquire 126 shares of LF&D stock, which amounted to a controlling interest in the railroad, prior to the execution of the contract between the LF&D and the DeGraff firm. Judge Brill went on to report that

Villard agreed to give to one Livingston, (who had aided DeGraff & Co. in effecting the sale [of LF&D stock to Villard]), one-tenth of the profits which should be realized in building the road, . . .²

Judge Brill’s matter-of-fact explanation of Henry Villard’s arrangement with Livingston invites multiple questions that get at the heart of how some nineteenth-century Minnesota railroads were financed:

how did Crawford Livingston (1848–1925) of St. Paul, who was a descendant of the celebrated Livingston family of New York, come to play a behind-the-scenes role in the financing of a branch road that was to become part of the Northern Pacific? What does Livingston’s participation in this transaction tell us about who profited and who lost in this railroad deal? And lastly, why did the court rule as it did in this case?

Twenty businessmen, all of whom lived along the proposed route of the railroad, incorporated the Little Falls & Dakota Railroad on January 24, 1879. Six of the incorporators lived in Morris, five in Little Falls, another five in Sauk Centre, three resided in Glenwood in Pope County, and one was from Westport, a village in Pope County. They set the railroad’s place of business in Sauk Centre in Stearns County, determined that the company could issue up to 40,000 shares of stock with a par value of \$50 per share, and identified eight of the incorporators as the first board of directors.

The road’s charter indicated that it would run from a junction with the Western Railroad of Minnesota, at or

near Little Falls, which is situated on the east bank of the Mississippi River in Stearns County about twenty-five miles north of St. Cloud, southwestward by way of Sauk Centre, Glenwood, and along the north shore of Lake Whipple (now called Lake Minnewaska) to the village of Morris, which is in Stevens County. From there the railroad was to continue to a point on Minnesota’s western boundary with Dakota Territory near Big Stone Lake in Traverse County. The approximate length of the completed road, according to the court opinion, would be about 130 miles.³

Unacknowledged in these articles of incorporation, but very important to the Northern Pacific, was the fact that the proposed route of the LF&D would cross both the Main and Branch lines of the St. Paul, Minneapolis & Manitoba Railroad, the railroad that James J. Hill managed.⁴ Hill and his railroad would oppose construction of the LF&D aggressively once the LF&D’s owners arranged financing to build their railroad.

In terms of construction difficulties, the major problem that the proposed road would encounter was building a bridge across the Mississippi River at Little Falls. Once the engineers had spanned the river, the likely route for the railroad was through stands of timber and large stretches of open prairie. At the western end of the projected railroad, the LF&D would be able to draw freight traffic, particularly wheat, from the portion of the Red River valley in the vicinity of Ortonville and Browns Valley, Minnesota.

Initially the LF&D’s board of directors decided that one of its stockholders and directors would serve as chief engineer and authorized him to hire a surveying party to lay out the road, but that effort fell short due to a lack of money in the company treasury. The minutes of the



Crawford Livingston, from a copy of a portrait. Used by permission of Livingston's granddaughter, Mary Griggs Burke.

board of directors state that on August 20, 1879, they invited Colonel William Crooks of St. Paul "to appear before the board and make any proposition he had to make." Crooks then told those present that he wanted "to take an interest in the Company." The following day at a meeting in the village of Morris, Crooks submitted a proposal "to assume control of the building of the Little Falls and Dakota Railroad." This work would include surveying the whole line of the railroad,

grading the road no later than July 1, 1880, and completing construction of the line no later than November 1, 1881. At a subsequent meeting of the stockholders of the LF&D in Morris on September 10, Crooks moved the completion date back a year to November 15, 1882.

At this meeting, the LF&D board voted to accept Colonel Crooks's proposal. Since only 250 of the authorized 40,000 shares of stock had been issued by the LF&D, Crooks signed and paid for 126 shares of

LF&D stock in the name of DeGraff & Company. These shares gave Crooks, as a principal in DeGraff & Company, control of the railroad. Subsequent resignations from the board of directors allowed the board to elect Crooks, Charles A. DeGraff, and George L. Becker, another experienced railroad man from St. Paul who had once been the president of the St. Paul and Pacific Railroad, to the board. In addition Crooks was elected president of the LF&D and its chief engineer. Charles DeGraff was elected vice president. By October 24, 1879, the DeGraff firm had completed a preliminary survey of the route from Little Falls to Browns Valley, but the lack of money to pay for construction of the line was the big obstacle to further work.⁵

The minutes of the September 10 LF&D stockholders meeting also state that five associates of Colonel Crooks were present that day. Among these associates were L.E. Reed, Charles A. DeGraff, and William P. Clough, all of St. Paul. Apparently Crooks came to the village of Morris ready to deal with the board of directors and he brought along several other men whom he believed would add credibility to his proposal to the railroad's stockholders. Subsequently in 1881 when the *Weed* lawsuit went to trial, Crooks, Reed, and Clough would all be called to testify and DeGraff would be prominently mentioned by those who took the stand.⁶

Colonel William Crooks was a major figure in Minnesota railroading. Born in New York City in 1832 and educated at West Point, Crooks served as an assistant to John B. Jervis (1795–1885), who was renowned for his work as a civil engineer in laying out several early railroads in New York. His grandfather, Ramsey Crooks, had been a fur trader who was a partner of John Jacob Astor in the Astor Fur Trading Company, and thus had ties to Minnesota.

In 1857 William Crooks was hired as assistant engineer for the Minnesota and Pacific Railroad and two years later became the road's chief engineer, a post he held until 1862, when he returned to military service in the Union army as colonel of the Minnesota Sixth Infantry. During his initial service with the railroad, Crooks oversaw construction in 1862 of Minnesota's first rails, which covered the ten miles between St. Paul and St. Anthony. He may be

best known as the man who purchased the road's first locomotive, which was named the "William Crooks." During the Civil War, Colonel Crooks initially served with General Henry H. Sibley in the conflict with the Sioux Indians in Minnesota and the Dakotas. Later in the war he was stationed in the South.

Crooks resigned from the army at the end of hostilities and resumed working for his former railroad, which by then had become the St. Paul and Pacific, the predecessor of James J. Hill's Manitoba line. In 1869 he left the railroad and became a partner in DeGraff and Company, which he led until 1890. A resident of St. Paul, Crooks also served briefly in the Minnesota legislature. Crookston, Minnesota, was named for William Crooks in honor of his pioneering work on Minnesota railroads. He died in Portland, Oregon, in 1907.

Charles A. DeGraff was the son of "Colonel" Andrew DeGraff. The senior DeGraff was born in 1811 in a small community west of Albany, New York, in the Mohawk Valley. The DeGraff family was descended from Dutch stock. Because Andrew DeGraff helped build the Utica and Schenectady Railroad in the 1830s, he may have been acquainted with Johnston Livingston, Crawford's uncle, who was then a civil engineer working for the Erie Railroad. Following work for railroads in Ohio, Indiana, Michigan, and Wisconsin, Andrew DeGraff moved to St. Paul in 1857, where he resided until his death in 1894.

DeGraff relocated to Minnesota because his firm was awarded the contract to build the Winona & St. Peter Railroad, a line that was to run from the Mississippi River at Winona westward to Lake Kampeska in Dakota Territory. The Panic of 1857 and then the Civil War delayed completion of this railroad until 1868. Crawford Livingston was employed by the Winona & St. Peter after he came to Minnesota from New Jersey in 1870. Thus Livingston may have met Andrew or Charles DeGraff after he came to Winona. Following completion of the Winona railroad, Andrew DeGraff then spent three years building part of the St. Paul and Pacific Railroad.

Charles A. DeGraff, the colonel's son, was born in New York City in 1843 and

came to Minnesota with his father, where he too was involved in building railroads. The establishment of the partnership between Charles DeGraff and William Crooks in the firm of DeGraff & Company brought together two knowledgeable and well-connected railroad men.

Judging from Crooks's testimony, his role in the DeGraff firm was to provide liaison with clients and other influential



Colonel William Crooks, about 1875. Photo by Charles A. Zimmerman. Photo courtesy of the Minnesota Historical Society.

people who were interested in investing in Minnesota railroads.⁷ Crooks told the court, "The fact is the [LF&D] had no money. Whatever was done, I paid all the expenses myself, and I did pretty much as I wanted. I had control of the whole thing myself."⁸

Lathrop E. Reed, another associate of Colonel Crooks, told the trial court he had resided in St. Paul for about twenty years and had at one time been a director of the LF&D. Reed was also a partner in Reed & Sherwood, lumber manufacturers with offices on Robert Street in St. Paul, and the president of the Capital Bank. Born in 1830 in Massachusetts, Reed had come to St. Paul in 1851, where he worked at a variety of jobs and speculated in real estate, at which he did well until the Panic of 1857, when he lost most of his money. Reed slowly recovered from these misfortunes and in 1862 began working with

a small private bank in the city. Soon thereafter he was associated with the First National Bank, which was organized in 1864. According to the obituary for Reed in the *St. Cloud Press*, Reed "assisted J.J. Hill to get control of the old Manitoba railroad [the St. Paul & Pacific]." In 1880 Reed organized the Capital Bank of St. Paul, which at the time of the trial was one of the smaller banks in the city.

Joshua H. Sanders, who with James Weed was a plaintiff in the case against the LF&D, was a director of Reed's Capital Bank and of the First National Bank. Hill was also a director of the First National, as was Charles A. DeGraff. When Reed died in 1901, all the newspaper accounts of his passing said that he owned considerable real estate. The *Pioneer Press* provided this summary of Reed's career: "A farm laborer, a carpenter, a school teacher, a banker, and a capitalist, Mr. Reed was another of the self-made men aided by American ambition and frontier opportunity."⁹

Reed testified that he "was solicited by Mr. Crooks to become a director and take an interest in [the LF&D] and help the matter along." Crooks probably identified Reed as someone who would be useful to have at the meeting in Morris because he not only headed a St. Paul bank, but also because the Northern Pacific had been a large purchaser of lumber from the extensive milling operations that Reed owned in Anoka, Minnesota.¹⁰

William P. Clough was a lawyer from St. Paul who played several roles in this drama. According to his testimony, Clough became a director of the LF&D at the stockholders meeting in Morris in September 1879 at the request of Colonel Crooks and DeGraff & Company, but he became the owner of two shares of LF&D stock only a short time before the lawsuit was initiated when Henry Villard gave them to him. In his testimony Clough explained these shares were "not understood to be a gratuity." He and Villard just had not yet fixed the price for them.

Born March 20, 1845, in western New York, Clough received his early education in western Pennsylvania and then moved to Rochester, Minnesota, in 1867, where he began studying the law in the office of a local attorney. Clough was admitted to the

Minnesota bar in 1868 and practiced law in Rochester until 1872, when he moved to St. Paul and became a partner of John Gilman, a prominent attorney in the capital city. In 1880 Clough became the western counsel for the Northern Pacific. In 1887 James J. Hill persuaded Clough to leave the NP and become Hill's assistant at the Manitoba road. In that capacity he became one of Hill's most trusted advisors. Clough

James Weed was the senior partner with another man in an insurance agency in St. Paul that had its offices on Third Street (now Kellogg Boulevard). Weed was born in Racine, Wisconsin, in 1845. He moved to Winona, Minnesota, in 1864, where he worked as a clerk in a local business. Two years later he relocated to St. Paul as a clerk with the Northwestern Union Packet Company. In 1867 he switched from trans-

Sanders paid par value for their combined shares, then their investment cost the two a total of \$800.

In his testimony in the *Weed* trial, Crooks explained that after he had purchased 126 shares of LF&D stock on behalf of DeGraff & Company, he had had his partner, Charles A. DeGraff, prepare a contract that included a detailed estimate of the cost of building the LF&D. Crooks then signed the contract. He said he wanted to make sure that Charles DeGraff or DeGraff & Company would get the work once financing was obtained. Crooks also testified that the contract was "to be used in negotiations with eastern parties for the funds with which to pay for [construction of the LF&D]."

Crooks then testified that after Henry Villard became president of the Northern Pacific in 1881, he "employed" Crawford Livingston to accompany him to New York to "lay" information about the LF&D (such as the construction contract with Charles DeGraff) "before" Villard. Livingston, Crooks said, "was acting as a broker." Crooks went to New York because he "was interested in building this road, and getting it built. That is where I expected to make some money out of it." He also emphasized that he "wanted to sell this stock which I owned to somebody who would undertake to build this road; and I did sell it to Mr. Villard, that is 126 shares." According to Crooks, Villard paid him \$90,000 for his stock in the LF&D.¹³ Assuming Crooks paid par value (\$50) for each of his 126 shares, then he had initially invested \$6,300 in the LF&D. Villard, on the other hand, paid over \$714.00 for each share he bought from Crooks.

During his time on the stand, Colonel Crooks was asked what compensation Crawford Livingston received for brokering the sale of the 126 shares of LF&D stock. Crooks said,

I did not pay him any compensation myself for his services as a broker. He was to have a contingent interest upon what he got. . . . I think it was that he should have a tenth interest in the profit arising from constructing the road, in whatever shape it came; that he was to have a tenth of that, I think so, I believe that was it. That was for his own use



The house at 432 Summit Avenue in the early 1880s, a few years before Crawford Livingston bought the home and moved his family there. Today the residence is known as the Burbank-Livingston-Griggs house. Photograph by Truman W. Ingersoll. Photo courtesy of the Minnesota Historical Society.

later became a vice president of the Great Northern Railway Company and in 1914 completed his long career in railroading as chairman of the road's board of directors. He died in New York in 1916.

When James H. Weed and Joshua H. Sanders sued the LF&D in October 1881, William Clough served as the legal counsel for the defendants, which included the railroad, DeGraff & Company, William Crooks, Henry Villard, and others. Writing on the stationery of the Legal Department of the Northern Pacific in the summer of 1882, Clough conscientiously kept Villard, who was in New York, informed of details of the *Weed* lawsuit.

Who were James H. Weed and Joshua H. Sanders, the plaintiffs, and what was the argument that they, through their two lawyers, were making in this case?

portation to insurance. He also invested in real estate through an association with Gustave Willius, who was president of the German-American Bank in St. Paul and an owner of some shares in the LF&D.¹¹

Joshua H. Sanders was a partner in a St. Paul firm that dealt in lime, plaster, cement, and storage space. Their offices were on the Levee. As mentioned earlier, Sanders was also a director of the First National Bank, James J. Hill's bank, and L.E. Reed's Capital Bank. Thus he may also have had other sources of income, such as real estate, besides his business on the Levee. Neither Weed nor Sanders was an original incorporator of the LF&D. Both had purchased shares of stock in the railroad at a later date and by mid-1881 they together owned sixteen shares.¹² If Weed and

exclusively. . . . That tenth interest in this deal was reckoned at \$10,000. . . . This tenth interest that Mr. Livingstone [sic] was to have was not a tenth interest in the profit derived by DeGraff & Co.; it was a tenth of the profit derived by the parties who, by whoever [financed construction of the railroad].¹⁴

Jonathan Simmons, another LF&D stockholder who testified in the *Weed* trial, provided more background on how Crawford Livingston became a broker in the sale of LF&D stock. Simmons, who was from Little Falls, had been an original incorporator of the railroad and at one time a member of the road's executive committee. He told the court that there had been a meeting of the executive committee in the offices of DeGraff & Company in St. Paul that he had attended along with Crooks, Clough, and Livingston. Livingston was there, Simmons said, at the invitation of Colonel Crooks.

Livingston, Simmons testified, told the group "as to his knowledge of railroad building, his acquaintance with . . . eastern parties, his connection with eastern markets anyhow, and to submit to us what his ideas were, and for the purpose of having himself employed, or authorized to go east with Mr. Crooks to make such arrangements as they could to have the road built." Clough then drew up "an instrument authorizing [Crooks and Livingston] to go [east], . . . and signed by the full committee . . . and to use, as a basis for their operations, . . . this DeGraff & Co. [construction] contract which had been made a year before."¹⁵ The Simmons testimony supports what Colonel Crooks told the court about Livingston, places Clough at the center of the effort to recruit eastern financial help, and establishes that other directors knew that Crooks was actively looking for financial help for the LF&D.

Later in his testimony, Simmons recounted how he had attended a meeting of LF&D directors on July 4, 1881, that had been held in Henry Villard's room at the Metropolitan Hotel. Villard had come to St. Paul at the invitation of General Herman Haupt, who had recently assumed the duties of general manager of the Eastern Division of the Northern

Pacific. Haupt was well qualified, but he had only arrived in St. Paul on May 1. An 1835 West Point graduate, Haupt had extensive experience as a railroad engineer for several railroads and had served for a time in the Union army as its railroad superintendent.¹⁶

While holding a board meeting in a guest's room at the Metropolitan Hotel



James J. Hill (1838–1916) about 1873, some ten years before he battled the Little Falls & Dakota Railroad for control of rail shipping in central Minnesota. Photo by J. Ludovici. Photo courtesy of the Minnesota Historical Society.

may have been somewhat irregular even in the 1880s, it did give the directors an opportunity to discuss financing the LF&D with Villard in a place that may have encouraged greater congeniality and openness than might have been possible in a bank or hotel meeting room or at Haupt's NP office. Six days previously, Charles DeGraff had resigned as a director and the board had elected Villard in his place.

According to Simmons, Villard explained that the mortgage bonds of \$20,000 per mile "were worth par" and "arrangements had been made to place them; . . . that a bond of a thousand dollars valuation, bearing six per cent interest, would cost a party six or seven hundred dollars in cash." Villard went on, said Simmons, to explain that a

buyer would "pay for this bond and that he would get in addition to that about a thousand dollars of stock [in the LF&D]. Simmons then reported that Villard concluded by saying that this type of financial arrangement was "what they called floating bonds with stock."¹⁷

Several other individuals who testified at the trial mentioned that they had heard Villard talk about "floating bonds with stock." It was a key aspect of the financing. When plaintiff James Weed testified, for example, he made the following point. If the board of directors issued 39,768 shares of unissued stock (at that time only 232 shares had been issued) along with the mortgage bonds that were to be sold, then "the stock [that Weed and Sanders owned] would be worthless. . . . If . . . the bonds were issued on top [of the stock], and the stock thrown in, why our stock would be good for nothing comparatively. [Consequently] we asked for an injunction."¹⁸ "Floating bonds with stock" was essentially a polite way of saying that the plan was to sell the bonds by watering the stock.

The trial record indicates that the financing of the LF&D was more complicated, however, than Crawford Livingston acting as a broker in the sale of 126 shares of LF&D stock to Henry Villard. An additional element in the financing of the LF&D involved a grant from the state of Minnesota to the railroad of swamp lands and what the court called "municipal aid;" that is bonds issued by counties or municipalities in support of the construction of the LF&D.

Lobbying efforts in the Minnesota legislature on behalf of the LF&D paid off on March 3, 1881. The legislature granted to the LF&D six sections of swamp lands per mile of track that it completed. Richard S. Prosser, in *Rails to the North Star*, states that the LF&D received 265,856 acres of swamp lands, which were valued at \$2.50 per acre. That gave the LF&D an asset that was worth \$664,640.¹⁹

Three Minnesota counties and two municipalities voted bonds as a construction bonus for the LF&D. When construction of the road was completed in November 1882, the LF&D subsequently received the following gratuities:

| | |
|----------------------------|----------|
| Pope County bonds | \$65,000 |
| Morrison County bonds | \$35,000 |
| Stevens County bonds | \$50,000 |
| Birchdale Town bonds | \$2,000 |
| Grey Eagle Municipal bonds | \$30,400 |

Thus the total governmental bonding support for the railroad was \$182,400.²⁰ When this figure is added to the value of the grant of swamp lands from the state, then the LF&D received \$847,040 in financial aid from various governmental entities in Minnesota.

As Villard was reported to have said in the meeting at the Metropolitan Hotel, these bonds would have to be “placed.” In other words, the railroad would need to sell them to a person or organization that would in turn sell the bonds to individual investors. Once more Crawford Livingston was involved. A letter from Henry Villard to Livingston in the NP records dated September 11, 1882, reads in part:

I have your note of the 6th inst. in reference to my making a proposition for the sale of the Little Falls & Dakota . . . bonds. The proposition should come from you. It is my purpose to receive propositions for these bonds whenever they come to hand, arranging [?] a sale to the highest bidder.

If you decide to make a proposition on the bonds at that time, I will give you an opportunity to do so.²¹

A January 1883 letter from Thomas F. Oakes, who was vice president of the NP and chair of its executive committee, to A.J. Thomas, another NP executive, states that earlier that day Oakes had received on behalf of the LF&D \$79,800 in county and municipal bonds. Oakes then went on to report that he had delivered all but \$5,000 of the bonds to Crawford Livingston, who had made arrangements with Henry Villard to buy these bonds for 90¢ on the dollar.²² Because municipal bonds generally had a lower risk than railroad mortgage bonds, Livingston had to pay more for them than buyers of LF&D mortgage bonds had to pay.

Placing the county and municipal bonds for sale after the LF&D was built was independent of the outcome of the *Weed* lawsuit, but the two are related because of the role that Livingston

played in this episode of railroad financing. Based on Oakes’s letter, Livingston received bonds that had a face value of \$74,800, for which he paid 90¢ on the dollar or a total of \$67,320. Plus he received \$10,000 for brokering the stock sale between Colonel Crooks and Henry Villard. That increases his total potential compensation to \$84,800, assuming he

did not know. The amount of bonds per mile talked of, I think it was \$20,000. It was talked of [at the July 4 meeting], because we talked of the profits—talked of the profit there would be; calculated that we had about \$7,000 profit. By profit I mean the difference between the actual cost per mile and the face value of the bonds. I think it was Mr. Villard who said that, who made those statements. . . .²³



Crawford Livingston and his family at their home at 432 Summit, around 1888. Family members seen here included, left to right, Livingston; his wife, Mary Potts Livingston; a groom; and three children: young Crawford, Abbie, and Mary. Photo courtesy of the Minnesota Historical Society.

was able to sell at par all the county and municipal bonds he received.

Lengthy testimony in the *Weed* trial establishes that through various contractual arrangements with DeGraff & Company, Henry Villard gained control of all the assets, stock, mortgage bonds, and municipal securities of the LF&D. If Weed and Sanders had initiated their lawsuit over the issue of watered stock or the question of Villard having a potential conflict of interest in the financing of the LF&D, then this case might not deserve much attention, but there is more to it. When E.P. Barnum, another LF&D director and defendant, testified, he told the court what he had heard at the Metropolitan Hotel on July 4, 1881.

I knew they talked of issuing [mortgage] bonds, but how it was going to be done, I

Judge Brill, in his opinion for the district court, confirmed the accuracy of Barnum’s numbers. Judge Dickinson in the opinion of the Minnesota Supreme Court stated that “the actual cost of construction and equipment, as provided in the DeGraff contract, would not exceed \$14,000 per mile, nor would it cost . . . more than that sum to carry out his contract with them.”²⁴ Based on the trial record, the estimated costs may have been closer to \$13,000 per mile. The LF&D, of course, paid DeGraff & Company for these construction costs. Crooks presumably profited from this payment.

When the LF&D was completed in November 1882, it ran only from Little Falls to Morris, a distance of about 88 miles (not the 130 miles that was mentioned in the court’s opinion) because

the portion from Morris to the state line with Dakota Territory was never built. Nevertheless, the projected profit on the mortgage bonds would have been between \$528,000 and \$616,000.

Weed and Sanders owned sixteen shares of stock in the railroad and they knew Villard's plan for making money from the mortgage bonds; thus they wanted to be among those who were going to profit from the LF&D financing. Much of the testimony in the trial concentrated on what Villard had disclosed regarding his plan, when he had disclosed it, and who had knowledge of the plan.

Between the meeting on August 4 and October 1881, when they initiated their lawsuit, Weed and several others who owned stock in the LF&D and knew about Villard's plan tried to persuade him to allow them to buy some of the mortgage bonds. Evidence presented at the trial indicated that Villard had definitely encouraged Weed and his associates to believe that they might share in the profits if they were able to put up sufficient money to buy some of the bonds.²⁵ Yet despite the pleas of Weed and his associates to sell them some of the bonds, Villard ultimately rejected their entreaties. Angry and upset by this rebuff, Weed and Sanders sued.

Counsel for the plaintiffs in the *Weed* case argued that the court should issue an injunction to prohibit the transfer of bonds and stock from the LF&D to Villard and rule that such a transfer would be a fraud on the railroad's minority shareholders. In his 1883 opinion, Judge Dickinson ruled that the Minnesota Supreme Court

has not in terms found the transaction complained of to be fraudulent, but from the facts found the conclusion of fraud cannot well be avoided; and for the purposes of the case, we assume that the transaction was a fraud to the stockholders not consenting to it, for the reason that the corporation was made to assume obligations, by the issue of bonds and stock, largely in excess of the amount necessary to raise money sufficient for the construction and equipment of the road; the difference between the actual cost of the work and the value of the stock, bond and municipal securities, being gratuitously bestowed by the corporation upon ... Villard.²⁶

Judge Dickinson's opinion thus upheld the decision of the district court. The judge reasoned that by consenting to a contract that they knew was part of Villard's plan to issue mortgage bonds and stock substantially in excess of the actual cost of building the railroad, directors such as Barnum, Simmons, and their associates Weed, Sanders, Reed, and others were all participants in the fraud and that the plaintiffs were not entitled to relief by the court. According to Judge Dickinson, "Not only does the evidence tend to charge the plaintiffs legally as parties participating . . . in the making of the alleged fraudulent contract, but it places them in the position of having ratified the transaction with a knowledge of the facts, by seeking to obtain for themselves the fruit of it."²⁷

Weed and Sanders lost in court, but their defeat was not the consequence of unskilled legal representation. On the contrary, the lead attorney for the plaintiffs was George B. Young, a partner in the St. Paul firm of Young and Newell, with offices on Third Street, not far from the office of James J. Hill.

Young had been born in Boston in 1840, graduated from Harvard College and Harvard Law School, moved to New York where he was admitted to the bar in 1864. Then in 1870 he went west to Minneapolis. In 1874 Minnesota's governor appointed him to fill a vacancy on the state supreme court. Having completed this brief assignment in 1875, Young entered private legal practice in St. Paul with Stanford Newell and became a St. Paul resident. Hill biographer Albro Martin describes Young as "one of the ablest lawyers in St. Paul."²⁸

Young's service as legal counsel for Weed and Sanders may have been a coincidence, but the testimony of Colonel Crooks at one point during the trial supports the likelihood that James J. Hill played a role in the hiring of Young to represent the plaintiffs in this case. Crooks told the court,

This enterprise [involving the LF&D] met an open and very vigorous hostility on the part of the Manitoba railroad. . . . This L.F.&D. Road runs all the way through what by railway parlance would be termed St.P.M.&M. territory. Public manifestations were made

by the Manitoba R.R. Co. in hostility to this; they opposed it at every stage, openly and privately; . . . wherever I turned up I found the Manitoba in front of me. . . . It was understood among the public generally to be the effect of such competition upon the part of the Manitoba road, upon the interests of the L.F.&D. road to kill it.²⁹

Despite the hostile activities of the SPM&M, between January and April 1882 the LF&D's construction workers were able to build a bridge across the Mississippi at Little Falls and then complete laying track to Morris. On October 28, 1882, the *Morris Tribune* printed a lengthy account of a special train that brought the NP's vice president, Thomas F. Oakes, along with a party of guests, to Morris in recognition of the completion of the railroad. The newspaper used the Oakes visit as an opportunity to editorialize that with the completion of the LF&D

the people of this village and surrounding country will have at least passed from the thralldom and terany [sic; "tyranny"?] of the Manitoba system which has outraged this upper country ever since the present management assumed control. Just what direct benefits, if any, will accrue to our people from this new thoroughfare we will not now discuss, as time alone will prove what they are, but it is safe to say that some little betterment in the line of freight and passenger transportation is at hand and for that we can be grateful.³⁰

Regular service along the LF&D began on November 1. Just over a week later, the *Morris Tribune* told its readers that the rate for shipping wheat to Duluth via the LF&D and the NP was the same as the rate per hundred pounds as it was to St. Paul via the Manitoba road.³¹

The legal documents associated with the case of *Weed vs. Little Falls and Dakota Railroad* show that Crawford Livingston was not a party to what Judge Dickinson called a fraud to "the stockholders not consenting to it." These papers also imply that Livingston did very well financially as a consequence of the assistance he gave Colonel Crooks.

Crooks also profited from the building of the LF&D. Henry Villard surely made

money on the LF&D as well. Minority shareholders such as James Weed and Joshua Sanders, however, were frozen out and made nothing.

During the trial, L.E. Reed, the associate of Weed and Sanders, reported on a conversation he had had with Henry Villard when Villard had been in St. Paul. Reed had called on Villard at the hotel to press the case for including certain minority shareholders in Villard's plan for profiting from the construction of the LF&D. Reed told the court that Villard "treated me very—rather discourteously. He didn't wish to spend

any time with me whatever." Reed, however, persisted in stating his case. Villard responded that "he was sorry. He had given away a tenth of it [the profit on construction] to another party. . . ." Reed, understandably, wanted to know who was to receive this tenth. Villard answered that "Mr. Livingston was the man who had the tenth. . . . Well, it was [Livingston] that negotiated the trade; and he claimed a tenth interest in it for his share on account of the negotiation."³²

With his connections to Eastern capitalists, Livingston successfully brokered

a deal between Colonel William Crooks and Henry Villard. These same connections also enabled Livingston to profit as an arbitrageur from the sale of the LF&D municipal bonds. More importantly, Livingston's role in this episode in Minnesota railroad financing sheds an important light on just how some deals got done and who profited from them.

John M. Lindley is the editor of Ramsey County History. He is writing a biography of Crawford Livingston.

Endnotes

1. *James H. Weed et al. vs. Little Falls & Dakota Railroad Company et al.*, 31 Minn. 154; 16 N.W. 851; 1883 Minn. LEXIS 37.
2. *Ibid.*, 154.
3. Articles of Incorporation, Little Falls & Dakota Railroad, in Northern Pacific Railway Papers, Branch Lines, Minnesota History Center, St. Paul, Minn. Nearly all the communities represented by the incorporators of the LF&D had very small populations.
4. John C. Luecke, *The Northern Pacific in Minnesota* (St. Paul: Grenadier Publications, 2005), 131.
5. Minutes of the Board of Directors, Little Falls & Dakota Railroad, in Northern Pacific Railway Papers, Branch Lines, Minnesota History Center, St. Paul, Minn., and the *Railroad Gazette*, September 26 (p. 514) and October 24, 1879 (p. 574).
6. Minutes of the Board of Directors, Little Falls & Dakota Railroad.
7. Biographical information on William Crooks is from "William Crooks," an undated typescript biography of Crooks that was written by Marie Crooks Just in the William Crooks Papers at the Minnesota History Center, St. Paul, Minn. and Augustus J. Veenendaal Jr., *The Saint Paul & Pacific Railroad: An Empire in the Making, 1862–1879* (DeKalb, Ill.: Northern Illinois University Press, 1999), 30, 33, 40, 45, 78, and 149. Information on Andrew and Charles A. DeGraff is from "Colonel Andrew DeGraff," in *The Biographical Dictionary and Portrait Gallery of Representative Men of Chicago, Minnesota Cities, and the World's Columbian Exposition* (Chicago: American Biographical Publishing Co., 1892), 932–33; Veenendaal, 33, 39–40, 123, and 150–51; C.C. Andrews, *History of St. Paul, Minn.: With Illustrations and Biographical Sketches of Some of Its Prominent Men and Pioneers* (Syracuse, N.Y.: D. Mason & Co., 1890), 42–44; Alan R. Woolworth, *The Genesis and Construction of the Winona & St. Peter Railroad, 1858–1873* (Marshall, Minn.: The

Society for the Study of Local & Regional History at the History Center, Southwest State University and the Minnesota Historical Society, 2000), 6–8 and Andrew DeGraff's obituary in the *St. Paul Dispatch*, November 8, 1894, p. 5.

8. Crooks testimony, *James H. Weed vs. Little Falls & Dakota Railroad Company*, case no. 14740, 14, in box 187, Civil Case Files, Ramsey County District Court records, Minnesota History Center, St. Paul, Minn.

9. Information on Reed is from the *1880–81 St. Paul City Directory*, 470 and from the obituaries in the *Minnesota Historical Society Scrapbooks*, 14:55–57, 60–61, Minnesota History Center, St. Paul, Minn.

10. Reed testimony, *Weed vs. Little Falls & Dakota Railroad*, 159–60.

11. Biographical information for James H. Weed is from the *1880–81 St. Paul City Directory* (St. Paul: R.L. Polk Co., 1881), 574 and Andrews, 205–06.

12. Biographical information for Joshua H. Sanders is from the *1880–81 St. Paul City Directory* (St. Paul: R.L. Polk Co., 1881), 494. Stock holdings of Weed and Sanders is from the June 13, 1882 Minutes of the Board of Directors, Little Falls & Dakota Railroad. The minutes also indicate that at that time Villard owned 121 shares and Clough and Haupt each owned two shares of LF&D stock. One share of the 126 that Villard originally purchased appears to be unaccounted for.

13. Crooks testimony, *Weed vs. Little Falls & Dakota Railroad*, 7–9, 12, 18, and 20.

14. *Ibid.*, 37–38.

15. *Ibid.*, 107–09.

16. Biographical information on Herman Haupt is found in James A. Ward, *That Man Haupt: A Biography of Herman Haupt* (Baton Rouge, La.: Louisiana University Press, 1973), 217–221. At the beginning of Haupt's testimony in the *Weed* trial (page 217), he briefly summarized how he had become associated with the NP and the LF&D.

17. Simmons testimony, *Weed vs. Little Falls & Dakota Railroad*, 113–14.

18. *Ibid.*, 155.

19. Richard S. Prosser, *Rails to the North Star* (Minneapolis: Dillon Press, 1966), 139.

20. *Ibid.* In Judge Dickinson's opinion in the *Weed* case, he states that the total for the county and municipal bonds was \$164,800, which is \$17,600 less than the figure Prosser has (*Weed*, 159).

21. Henry Villard letter to Crawford Livingston, September 11, 1882, in Subject Files of the Presidents, Northern Pacific Railroad Papers, box 3, vol. 24, #442, Minnesota History Center, St. Paul, Minn.

22. Thomas F. Oakes letter to A.J. Thomas, January 4, 1883, in the Henry Villard Papers, 1862–1928, series VIII, box 39, file 286, Baker Library, Harvard University, Cambridge, Mass.

23. Barnum testimony, *Weed vs. Little Falls & Dakota Railroad*, 51.

24. *Weed vs. Little Falls & Dakota Railroad*, 160.

25. Trial testimony, *Weed vs. Little Falls & Dakota Railroad*, 40–53, 113–14, 135–36, 144–47, 161–69.

26. *Ibid.*, 161.

27. *Ibid.*, 163.

28. *1880–81 St. Paul City Directory*, 595; Obituary for George B. Young in the *Minnesota Historical Society Scrapbooks*, 43:55–67, Minnesota History Center, St. Paul, Minn.; Albro Martin, *James J. Hill and the Opening of the Northwest* (New York: Oxford University Press, 1976; with a new introduction, St. Paul: Minnesota Historical Society Press, 1991), 133, 357; and Michael P. Malone, *James J. Hill: Empire Builder of the Northwest* (Norman, Okla.: University of Oklahoma Press, 1996), 61.

29. Crooks testimony, *Weed vs. Little Falls & Dakota Railroad Company*, 191–93.

30. Quoted in Luecke, 136.

31. *Ibid.*, 137.

32. Reed testimony, *Weed vs. Little Falls & Dakota Railroad Company*, 164–65.

R.C.H.S.

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