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**The Mayor and City Council of Baltimore v. The Baltimore and Ohio Railroad
(1864)**

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Abstract

The B&O Railroads area of operations during the Civil War placed it both in harms way, as well as presented opportunities for immense profit and expansion. However, two distinct parties within the board of directors remained at odds over the nature and direction of the growth. Using one particular case as a foundation, this paper examines the dynamics of the board of directors during the Civil War through a case study of a injunction brought by members of the board against the controlling board as a whole. Within a comprehensive examination of the history of the B&O and its role during throughout the course of the war, this paper uncovers the nature of the dispute, as well as the dynamics of the players and events involved, which formed a catalyst for the expansion of one of the most successful railroad operations in American history.

Disciplines

Law | Legal History, Theory and Process

The Mayor and City Council of Baltimore v The Baltimore and Ohio Railroad (1864)

Introduction

On February 11th 1863, a proposition was made to the Board of Directors of the Baltimore and Ohio Railroad Company to approve a \$1,200,000 loan to the Central Ohio Railroad Company, payable either directly or through the purchasing of a mortgage outstanding against Central. The board, which included the mayor and members of the city council of Baltimore who voted against the measure, approved the proposition. In response, on March 11th 1863, the mayor and city council filed for an injunction against the B&O which was granted that same day. However, on May 1st, the Circuit Court gave an opinion both dissolving the injunction and denying the mayor's attempt to secure a bond which would reinstate the injunction through the appeals process. On appeal of both rulings, in an opinion issued February 24th 1864, the Court of Appeals of Maryland upheld the Circuit Court decision.

On its face, the Mayor and City Council of Baltimore v the B&O Railroad was a rather straightforward case. No groundbreaking rulings were met, controversial results given, or holdings which redefined an area of Maryland jurisprudence. The fascinating aspect of this case was the history and context behind the dispute; between powerful entities and actors. While a legal analysis of the case is rather elementary, applying a historical perspective at each step will provide a greater understanding of the core reasons for the case, and its ultimate outcome.

Involved Parties

Along with the city council, the plaintiff in this case was Mayor John Lee Chapman, a Radical Unionist who was born in Harford County in 1811. Chapman was a clerk in a Baltimore drug store and afterwards became proprietor of a similar establishment, before going into the glass business with his brother. He was a member of the First Branch of the City Council in 1860 and was again elected in 1861, during which time he won election over incumbent John C. Blackburn, as President. Blackburn, as President of the First Branch, was Mayor of Baltimore ex officio following the arrest and incarceration of Mayor George William Brown, by federal troops, in response to the Brown's alleged treasonous activities at the outbreak of the civil war. The mayor's post, along with the police commissioners and the entire city council, were replaced. Upon his selection by the First Branch as President, Chapman became mayor, a position he held until 1867. Following the war, Chapman was President of the Western Maryland Railway Company for two years, and upon retiring from the mayor's office, held several minor positions under the Federal Government.¹



Mayor Chapman.

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One of the great complexities within the B&O management was the conflicting interests between the 30 directors on the B&O Board. Initially, 18 seats were held by the

¹ Online Archives of Maryland:
<http://www.msa.md.gov/megafile/msa/speccol/sc3500/sc3520/012400/012476/html/12476bio.html> (last visited 10/30/2011)

² Online Archives of Maryland:
<http://www.msa.md.gov/megafile/msa/speccol/sc3500/sc3520/012400/012476/html/12476images.html> (last visited 10/30/2011)

mayor and members of the city of Baltimore, who believed the B&O should offer rates low enough to ensure maximum prosperity for the city and state. The other 12 seats belonged to private stockholders (including B&O President John W. Garrett), who wished to maximize profits which would ensure lucrative dividends. However, in 1856, the board approved a 30 percent stock dividend, paid in certificates of debt that were convertible into stock after 5 years. The mayor, city and state responded with a lengthy litigation which lasted until 1860, when the courts finally approved the dividend. In 1862, once the stocks had matured, six of the ‘public interest’ seats were dissolved and the private stockholders held an 18-12 majority on the board.³

Interestingly enough, a large portion of these shares were purchased by the Garrett family and Johns Hopkins, both sitting board members (Hopkins made a fortune on his B&O investment, and would later found a leading University and Hospital in Baltimore). *Mayor and City Council of Baltimore v B&O Railroad* was a response to one of the first board actions in which the dynamics were realigned in favor of the private shareholders; and as such may have been a reaction by a mayor and city council upset about their newfound marginalized position in dictating the direction of the railroad.

The Mayor and Baltimore City Council were represented by John Lewis Thomas Jr. and William Price. Thomas was born in Baltimore in 1835, and practiced law in Cumberland before becoming a Maryland State’s Attorney in 1863. Like Mayor Chapman, he was an unconditional unionist, and following the war was elected as a representative to the Thirty-ninth U.S. Congress.⁴ Interestingly, Thomas was a huge railroad enthusiast. Beginning in 1857, Thomas began to travel on the nation’s

³ John F. Stover, *History of the Baltimore and Ohio Railroad*, 94-95, 115 (Purdue Univ. Press) (1987).

⁴ Online Bio. Directory of the U.S. Cong; <http://bioguide.congress.gov/scripts/biodisplay.pl?index=T000174> (last visited 11/6/2011).

expanding railroad system and write about his experiences, sending dispatches to Baltimore where his columns were published in city newspapers. His first trip was on the Union Pacific and took Thomas from Philadelphia to Fort Harker, Kansas, in 1857, and following the war took a trip through the South in 1866. In 1883, Thomas took part in a second Union Pacific trip which culminated in the famous golden spike, which for the first time connected the east and west coasts of the US by rail-line. Thomas' final trip was his longest, lasting nearly half a year in which he rode in style in a special car, Number 705, provided by the B&O, which took him from Baltimore to New Orleans, Mexico City, El Paso, Santa Fe, Salt Lake City and California.⁵ Price, born in 1792, was the U.S. District Attorney for Maryland during the war and was a delegate to the State constitutional convention in 1863.⁶



At left, John Lewis Thomas Jr.

At right, Thomas, F. C. Goldsborough, Samuel Spencer, W. H. Bull, and Isaiah Scott outside B&O Car Number 705



The plaintiffs' primary argument centered on the language of an 1836 supplemental to the original B&O charter, which the defendants claim enabled them to provide a loan to the Central Ohio. The text reads:

That when, in any case, the President and Directors of the Baltimore and Ohio Rail Road Company shall be of the opinion that the

⁵Rick Hendricks, *John Lewis Thomas, Jr.'s Visit to Fort Wingate in 1885*, in *Southern New Mexico Historical Review*: Doña Ana County Historical Society, Volume XVII (Las Cruces, New Mexico, Jan. 2011)

⁶ J. Thomas Scharf, *History of Maryland from the Earliest Period to the Present Day*, 729, 805 (Tradition Press, 1967 (reissue of 1879 ed.))

⁷ Picture obtained from <https://www.google.com/> images search of "Maryland John Lewis Thomas Jr."

⁸ Picture obtained from <https://www.google.com/> images search of "Thomas B&O Car 705"

construction of a Rail Road, lateral to any part of the road or roads of the said company, or in continuation of or connection with such lateral road, would be advantageous to said company, but that it would not be convenient for them to incur the whole cost of constructing the same, then the said President and Directors may, on behalf of said company, subscribe towards the construction of such lateral, continuing or connecting road, and acquire an interest therein to an extent not exceeding two-fifths of the estimated cost of constructing any such road.⁹

The plaintiffs argued that a literal interpretation of the Act clearly showed that the defendants had overstepped their bounds. The act allowed for funds in the “construction” of such a road that connected the Central Ohio and B&O; however, the lateral road in question had already been built. Further, it was argued, even if it hadn’t yet been built, the loan (\$1.2 million) covered the entire cost of the road (\$400,000 in 1854 dollars), which was over the maximum two-fifths cap provided for by the Act. Therefore, given the restrictions imposed by the supplement to the charter, the board’s decision to loan (or buy out the first mortgage) was beyond the corporate powers of the company.

The B&O was represented by John Henry Boneval Latrobe, born in 1803 to architect Benjamin H.B. Latrobe, the designer of the Baltimore Basilica and the Washington Capitol Dome. Latrobe was chief counsel for the B&O from 1827-1891. During his time with the B&O, Latrobe co-founded the American Bar Association and incorporated the Bar Association for Baltimore City. Further, he was co-founder & President of the Maryland Historical Society and co-organizer of the Maryland Institute College of Art. His son served five terms as Mayor of Baltimore, never winning as an incumbent.¹⁰

⁹ Mayor and City Council of Baltimore v Baltimore & Ohio Railroad, 21 MD 50, **25-26 (Md. 1864).

¹⁰ Online Archives of Maryland:

<http://www.msa.md.gov/megafile/msa/speccol/sc3500/sc3520/014300/014346/html/14346bio.html> (last visited 10/30/2011)



John H.B. Latrobe

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Interestingly, Latrobe was also trained as an engineer, and was chosen as chief engineer of the Central Ohio Railroad upon its creation (thanks in large part to significant funding from the B&O). Latrobe's relationship with the Central Ohio (and his 35 year tenure as lead counsel with B&O) likely had an impact in the board's decision to loan money to a troubled line which he helped create. Throughout the case, Latrobe defended the legitimacy of the loan despite its apparent deviation from the explicit text of the supplement to the charter:

...it is desirable that this company should, if practicable, exercise such control as well for the security of the debt due to it, as for the purpose of preventing the Central Ohio Rail Road from passing at this time into hands, that might by possibility be disposed to use it to the prejudice of this company and of the city of Baltimore, by diverting trade and travel, which while the two roads continue to be worked in concert, may be reasonably expected to come to the said city...Therefore, be it resolved, that the committee on Finance is hereby authorized to take such steps as may be necessary in their judgment, to substitute this company in the place and stead of the first mortgagees aforesaid, paying to them the amount due upon their respective claims under the said mortgages;¹²

Latrobe's argument was fairly straightforward. The Central Ohio's debt placed it at risk of consequences which would be detrimental to both the B&O and the City of Baltimore,

¹¹ Online Archives of Maryland:
<http://www.msa.md.gov/megafile/msa/speccol/sc3500/sc3520/014300/014346/html/14346images.html> (last visited 10/20/2011)

¹² Mayor and City Council of Baltimore v Baltimore & Ohio Railroad, 21 MD 50, **18, 19 (Md. 1864).

and thus the Board of Directors were justified in appropriating funds to cover said liabilities.

The Circuit Court judge for Baltimore City, William George Krebs, in his decision lifting the injunction, stated that “...there is nothing in this authority that demands of me the adoption of the strict and rigid construction of the charter of the Balt. and O. R. R. Co., which the complainant contends for.”¹³ Instead, Krebs turned to Smith, in his Commentaries on Statutory and Constitutional Construction, sec. 491, which stated:

The reason of the Statute, that is, motives which led to the making of it, the object in contemplation at the time the Act was passed, is another criterion by which to ascertain the true meaning of the Act. Attention should be paid to the circumstances whenever there is question either of explaining an obscure, ambiguous, indeterminate passage in the Act of the Legislature, or of applying it to a particular case;¹⁴

Using this guidance, Krebs delivered the following:

...that Courts in expounding and construing Statutes, are not confined to the mere words of the law, to the meaning only of the terms used, and to a literal interpretation of its language; but must take a more enlarged view and give their attention 'to the reason of the Statute,' 'the motives which led to the making of it,' 'the object in contemplation at the time the Act was passed,' and 'to the circumstances' under which it was enacted. This duty necessarily requires of me an historical glance at least at the origin of the Baltimore and Ohio Rail Road Company.¹⁵

A Brief History of the B&O Railroad

During the first quarter of the 19th century, the United States was expanding due to a combination of the 1803 Louisiana Purchase and a substantial increase in the

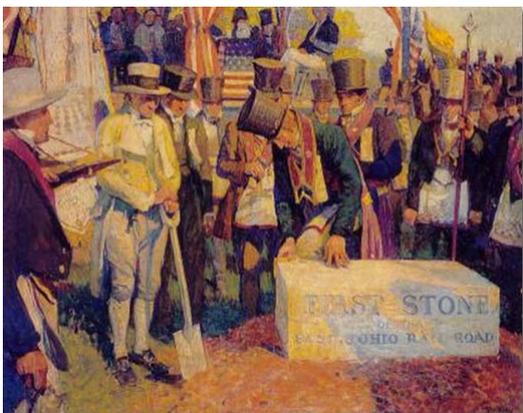
¹³ Mayor and City Council of Baltimore v Baltimore & Ohio Railroad, 21 MD 50, **31 (Md. 1864).

¹⁴ Id. **31, 32.

¹⁵ Id. **32, 33.

westward tide of migration. Due to a lack of land routes to the region, many settlers traveled and shipped their goods to and from the East via flatboat on the Ohio River and its tributaries. In 1825, the trade with the “Middle West” was about to be monopolized by New York’s Erie Canal, which gave it access to the Great Lakes, Mississippi and Ohio Rivers by extension. Further, Pennsylvania began development of a Main Route of Public Works; an intermodal transportation system linking Pittsburg with the region west of the Alleghenies.

In order to remain competitive with New York and Philadelphia during this time, some prominent Baltimore businessmen began examining the viability of a new British technology known as a railroad. In 1827, the Maryland Assembly authorized a charter for the Baltimore and Ohio Railroad to build a system which stretched from Baltimore over the Potomac River to Cumberland, before crossing the Allegheny Mountains and ultimately reaching the Ohio River. On July 4th, 1828 the ground was broken by Charles Carroll, the last surviving signee of the Declaration of Independence.¹⁶



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‘Laying the First Stone,’ oil on canvas by Stanley M. Arthurs, 1928.

¹⁶ Dave Oroszi & Kirk Reynolds, Baltimore & Ohio Railroad, 13 (MBI Publishing Co., 2000).

¹⁷ B&O Museum website, <http://www.eduborail.org/NPS-2/Image-1-NPS-2.aspx> (last accessed 10/28/2011)

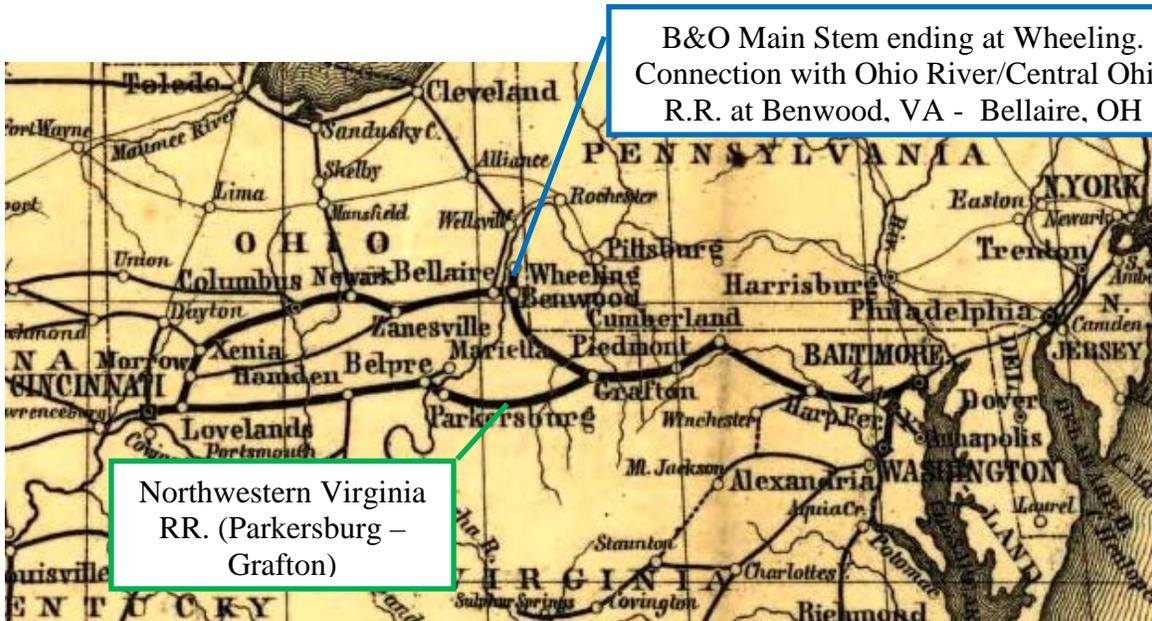
However, by 1850, the B&O had only made it as far as Cumberland, roughly halfway between Baltimore and the Ohio River access at Wheeling, VA (Later West Virginia). Latrobe, B&O General Counsel at the time and who represented the B&O in this case, stated “The public and the stockholders had become dissatisfied, the road stopped at Cumberland...”¹⁸ Finally, after a \$5.1 million dollar extension, the B&O reached Wheeling in December 1852, at a cost three times the estimate from 1827. In conjunction with the completion of the line at Wheeling, and access to Ohio River traffic, the B&O sought a link to a rail line in Ohio.

In February 1847, the Central Ohio Railroad was chartered, and despite significant difficulties during construction, extended from Columbus to Bellaire (On the Ohio River) by November 1854.¹⁹ Bellaire lay across the Ohio River from Benwood, Virginia, roughly 3 miles south of Wheeling, Virginia. The B&O line passed through Benwood, and provided an opportunity to link up with the new Central Ohio. At the same time the Central Ohio service from Bellaire began, the B&O loaned the Central Ohio \$400,000 to construct a road from B&O’s stop in Benwood to the river’s eastern edge.²⁰

¹⁸ John F. Stover, *History of the Baltimore and Ohio Railroad*, 63 (Purdue Univ. Press) (1987).

¹⁹ *Id.* 18-21.

²⁰ *Mayor and City Council of Baltimore v Baltimore & Ohio Railroad*, 21 MD 50, **3 (Md. 1864).

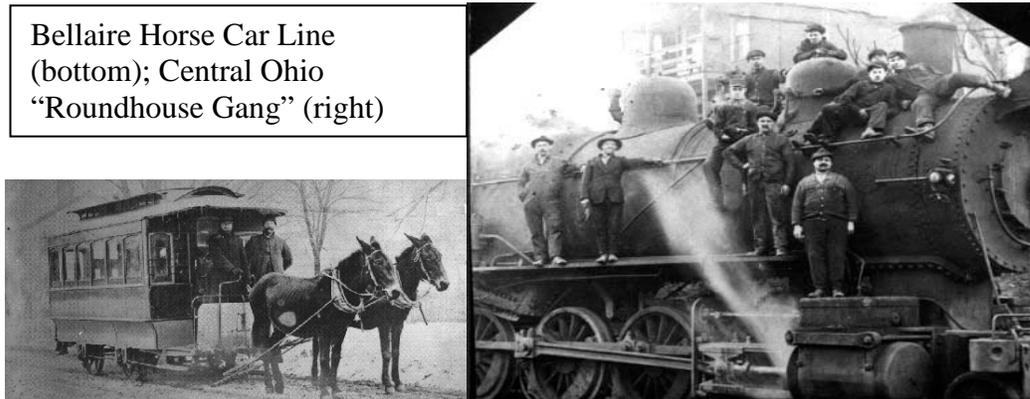


B&O Main Stem ending at Wheeling. Connection with Ohio River/Central Ohio R.R. at Benwood, VA - Bellaire, OH

Northwestern Virginia RR. (Parkersburg - Grafton)

The lateral road in question worked as follows (Using an example of cargo which was headed east): A Central Ohio train would stop at the Central Ohio Roundhouse at Bellaire, Ohio, and members of the Central Roundhouse Gang would unhook the car.²¹

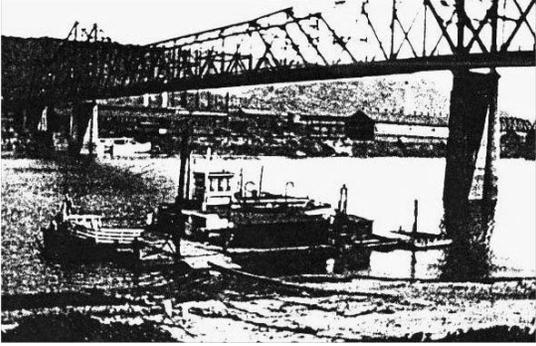
Bellaire Horse Car Line (bottom); Central Ohio "Roundhouse Gang" (right)



The Bellaire Horse Car line would move the cars to the river's edge on the western edge of the Ohio, where one of two ships for Benson's Ferry would transport the car across the river to Benwood, Virginia.²³

²¹ Bellaire Public Library Website, <http://www.bellaire.lib.oh.us/transportationv3.htm> (last visited 10/27/2011)

²² Bellaire Public Library Website, <http://www.bellaire.lib.oh.us/transportationv3.htm> (last visited 10/27/2011)



One of two 'Benson's Ferry'
river ferries.

Once crossed, the Citizens Railway Company would use horses to pull the cars roughly a third of a mile to the Central Ohio Station in Benwood where they would then be coupled onto an east-bound B&O train.²⁵



Central Ohio Railway Depot
with Citizens Railway Company
horse and car in foreground.
Benwood, VA.

At the same time the B&O was completing its line to Wheeling, a new line, the Northwestern Virginia Railroad, was chartered in 1851, with much of its funding coming from the B&O. The Northwestern Virginia connected with the B&O at Grafton; but instead of heading northwest towards Wheeling, extended straight west to Parkersburg, and thus further south on the Ohio River. Along with an advantageous position to intercept traffic below Wheeling, Parkersburg did not have the same issues with seasonal flooding which delayed efforts to load and unload goods and passengers at B&O's station in Wheeling. Further, the Northwestern's connection at Parkersburg was with the Marietta and Cincinnati Railroad which used the same gauge as both the B&O and

²³ *Id.*

²⁴ *Id.*

²⁵ Wheeling Area Trolley Museum Website, <http://www.lindapages.com/wags-ohio/trolley/trolley-train.htm> (last visited 10/27/2011)

²⁶ *Id.*

Northwestern. The Central Ohio used a smaller gauge when it was constructed, an added hindrance when transferring cars, passengers and goods across the Ohio.²⁷

Despite these issues, the B&O finally began to prosper and become a financial success during the 1850s. With a nearly 5:1 ratio over passenger receipts, freight traffic between the now accessible Midwestern states, comprised of coal, flour, livestock, grain and provisions, was the major spur of growth. Net receipts (revenue minus expenses) were just \$596,571 in 1849, but following the connections to the Ohio River on the main stem in 1851-52, this number increased over 600%, to \$2,305,586 in 1860.²⁸

Upon examination of the history of the B&O, the Circuit Court judge provided his analysis:

Now what is the object and purpose of the arrangement or transaction proposed by the company? It is unquestionably to secure the benefits and advantages to result from a connection with an important road in continuation of a lateral road, connected with their main stem. The Central Ohio Road is in jeopardy from legal proceedings, on the part of a creditor who has the power to compel a sale of its works, and thereby throw them into such hands as that the Baltimore and Ohio Road will derive no benefit and advantage from a connection with the former, but will lose all the trade which it now contributes. To secure and retain this connection, which the president and directors deem greatly 'advantageous to the company,' they propose to take the place of the creditor who holds the first mortgage on the works and property of debtor, given to secure bonds executed by it. The money for which these bonds were given, was no doubt applied 'towards the construction of this Central Ohio Road, and to pay the cost of constructing' the same.²⁹

Using this as his foundation, Judge Krebs held the following:

Now according to the strict and literal language and terms of this supplement, the President and Directors of the Baltimore and Ohio Road would have been authorized to subscribe towards the construction of this road whilst it was in progress, and to have paid

²⁷ John F. Stover, *History of the Baltimore and Ohio Railroad*, 82 (Purdue Univ. Press) (1987).

²⁸ *Id.* 89

²⁹ *Mayor and City Council of Baltimore v Baltimore & Ohio Railroad*, 21 MD 50, **35, 36 (Md. 1864)

two-fifths of its estimated cost, and to have thus acquired an interest therein to that extent. This might have been done to bring into existence a road which was advantageous to the defendant. The President and Directors being of opinion that the existence of this road, so far as they are interested in it, is threatened, propose merely to do now what they had an unquestioned right to do before the work was completed...This in my opinion is to 'effectuate the designs of the Legislature' in passing this supplement, to give the company such an advantage and benefit as the law intended it should acquire by an original subscription to the cost of the work, and substantially in the manner authorized, though not at the period designated in the very words of the law.³⁰

As such, the Circuit Court failed to be swayed by the plaintiff's primary argument.

Further, the Plaintiffs argued that the monies provided to Central Ohio would establish a precedent that the B&O cared more for the Central Ohio than the relatively new Northwestern Virginia Railroad, which connected with the Ohio River at Parkersburg. Such a large loan would lead to a B&O precedent "...favoring the business and trade of the said Central Ohio Rail Road, and injurious, if not destructive, to the great interest which the said Baltimore and Ohio Rail Road Company already possesses in the Northwestern Virginia Rail Road..."³¹ According to the Plaintiffs, the Northwestern's "...connection with the Baltimore and Ohio Rail Road at Grafton...and with the Ohio Rail Roads beyond Parkersburg, forms the most direct, the shortest and most reliable avenue for trade and travel between Baltimore and the city of Cincinnati, the heart and center of the great west."³²

It was therefore implied by the plaintiffs that the B&O should be focused on the Northwestern Virginia Line, rather than the Central Ohio (The Plaintiffs offered no evidence that the loan would compromise B&Os relationship with Northwestern; they

³⁰ *Id.* **36, 37

³¹ *Id.* **9

³² *Mayor and City Council of Baltimore v Baltimore & Ohio Railroad*, 21 MD 50, **2 (Md. 1864)

simply claimed it would). While not discussed by either party's counsel or within court decisions, it should be noted that the B&O loaned roughly \$7 million to the Northwestern Railroad to build their line. These funds were appropriated in 1851, when the "public interest" entities of the B&O directors, including the Mayor and city council, controlled the board by an 18-12 margin. As this paper mentions above, the "private interest" parties, including B&O President Campbell, who didn't join the B&O until 1855, had only recently, in 1862, obtained a controlling majority on the board of directors.

However, the defendants disagreed with the premise that Cincinnati was the 'heart of the west,' and thus more important to uphold B&O's relationship with the Northwestern Virginia:

On the contrary...while Cincinnati is a western city of great importance, and a connection with which is most desirable, yet that the trade of the so-called west is by no means centered there...this trade comes from a vast and fertile region, embracing the States of Ohio, Indiana and Illinois, and lying between and adjacent to the roads from Parkersburg to Cincinnati on the one side, and from Pittsburg to Chicago on the other; and through the heart of which passes the Central Ohio Rail Road, and its prolongation by other roads as far as St. Louis, on the Mississippi.³³

The defendant's emphasized their rebuke with one final note: "--all of these branches are important, and none more so than that which connects Baltimore with the great central region traversed by the Central Ohio Rail Road."³⁴

The plaintiffs' final argument concerned the capacity of the B&O to make large loans to foreign entities, despite the massive damage incurred by the line due to the Civil War:

The Baltimore and Ohio...since the commencement and during the continuance of our national troubles, has been frequently taken possession of by those in rebellion against the government, (at least

³³ *Id.* **8

³⁴ *Mayor and City Council of Baltimore v Baltimore & Ohio Railroad*, 21 MD 50, **9 (Md. 1864)

that portion of it lying in Virginia, between Harper's Ferry and Cumberland, Md.) and its bridges have been destroyed, the tract and rails torn up and removed, and the cars and engines burnt or otherwise destroyed; insomuch that the cost of reinstating and repairing the same will amount to a very large sum of money, and will tax the ability of the company severely to meet and defray the said necessary expense.³⁵

However, the defendants countered:

Your respondents admit, that since the commencement of the present troubles, the business of the Baltimore and Ohio Rail Road in the Valley of Virginia, has been much and more than once interfered with by the military operations in that quarter...that the repair of the damage done will cost a large sum of money...that the said repairs have been so far made, and paid for from the means heretofore accumulated, and the general resources of the company,-- that the road is open in its entire length, and is doing at this time a greater business than has ever before passed over it, and has been in full operation ever since the 7th day of January last; and that the ability of the company has not only not been severely taxed, but the company has just declared a dividend of three per cent. to its stockholders, payable in cash on the 31st inst., and has large funds earned and soon to be received by it, more than sufficient to put its road throughout into the best possible condition...³⁶

The plaintiffs' claimed the loan was unwise given the extent of the damage and the resources required for repair, while the defendants were steadfast that their profits more than made up for the expenses of the war-torn line. Both arguments lacked specifics, and a closer examination is required to understand which point of view was correct.

B&O and the Civil War

One might argue that the B&O was at the center of the two most visible conflicts preceding the start of the War. The first occurred on October 17th 1859, when a B&O Night Express train from Wheeling was intercepted by John Brown's raiders, who had

³⁵ *Id.* **3,4

³⁶ *Id.* **11-13

just assaulted the federal arsenal at Harper's Ferry. Ironically, despite Brown's ultimate objective of initiating a slave rebellion, the first member killed was a free colored B&O porter.³⁷ The second conflict was the B&O's role during the Baltimore Riots on April 19th 1861, in which federal troops, on their way to defend the capitol, were attacked by a hostile pro-southern mob while they travelled down Pratt Street to board the final leg of their journey at the B&O Camden Station. Following the riot, the B&O President received an anonymous letter:

One Hundred of us, firm, respectable, resolute men-have determined & sworn to each other to destroy 'every' bridge & tear up your track on both lines of your road between this city & their head points-If you carry another soldier over either line of your road after April 20th.³⁸

By the time of the commencement of hostilities between the North and South, the B&O was in the unfortunate position of having its line run directly through many of the strategic areas of operations for both sides. Serving the nation's capital, which lay across the Potomac from Confederate Virginia, the B&O's main stem extended westward through what today is West Virginia and ultimately points on the Ohio River and beyond.

However, the B&O's proximity and avenue to and from many of the theatres of combat during the war was in actuality a fantastic business opportunity. The B&O was a well-established route for Union troops and supplies, as well as goods to ensure that cities, such as the capitol, were able to function despite the ongoing combat operations surrounding them.

Likewise, the Confederate strategic command was aware of the critical role to be played by B&O on behalf of the Union, and soon after fighting started, efforts were made

³⁷ John F. Stover, *History of the Baltimore and Ohio Railroad*, 99, 100 (Purdue Univ. Press) (1987).

³⁸ Catton, William Bruce, *John W. Garrett of the Baltimore and Ohio: A Study in Seaport and Railroad Competition, 1820-74*. p.278 (Ph.D dissertation, Northwestern University, 1959).

to undermine the B&Os effectiveness. At the beginning of hostilities, the local Wheeling paper wrote that the B&O was an “amphibious animal that could not live on land, and died in water.”³⁹ However, despite the fact Virginia seceded in April 1861, federal troops still occupied the area covered by B&O lines until May, when they withdrew in the face of a Virginia militia mobilization. Despite this fact, the B&O trains were still allowed to run. On May 25th, a hillside rock was blasted down onto the tracks by confederate forces, and the next day two trestles were burned in Buffalo Creek, VA. Workmen cleared the rock and fixed the bridges in two days.

Following the fall of Fort Sumter in April 1861, Colonel Thomas “Stonewall” Jackson, a former unknown and soft-spoken professor of natural and experimental philosophy at the Virginia Military Institute, was placed in command of Virginia troops in the Harpers Ferry theatre. Knowing the North was using the B&O to build up supplies for its war effort, Jackson informed the B&O they could only run trains through his region for 2 hours each day; as a form of noise control. With the line packed for miles during the movement window on May 23rd 1861, Jackson captured 300 freight cars full of supplies and a half-dozen locomotives. All were dragged south by horse in hopes of supplementing the new Centreville Military Railroad, a 5.5 mile spur running from the Orange and Alexandria Railroad east of Manassas Junction across Bull Run and up the south side of the Centreville Plateau.⁴⁰ Unfortunately, for Jackson and the confederacy, the B&O utilized a standard gauge (4 feet 8.5 inches), while the railroads throughout the confederacy were an incompatible 5 feet.

³⁹ Fetus P. Summers, *The Baltimore and Ohio in the Civil War*, 44 (New York, 1939).

⁴⁰ John F. Stover, *History of the Baltimore and Ohio Railroad*, 104 (Purdue Univ. Press, 1987).



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In June 1861, now Brigadier General Jackson received orders to destroy all B&O property, and through October, burned 400 cars and 42 engines, as well as destroyed every train shop, depot, water house, and machinery to be found. Further, he destroyed 23 bridges, over 80 miles of track, and roughly 100 miles of telegraph lines.⁴² However, during this time, Lincoln appointed George McClellan as commander of the Department of Ohio forces, which included the Western Virginia Region. This decision was likely due in large part to McClellan's civilian experience as a surveyor for the Pacific Railroad during construction of the Transcontinental Rail-line, as well as positions as engineer and Vice President of the Northern Illinois Railroad and President of the Ohio and Mississippi Railroad. Knowing the strategic imperative for the Union of a functioning B&O, McClellan was instrumental in establishing the work crews who were responsible for maintaining service on the line despite dozens of attacks by confederate forces during the course of the war.⁴³

In late fall, 1861, Jackson's forces were thrown back, and Union forces retook control of the region. However, McClellan was promoted to overall command of the Union Army, and heavy rains destroyed much of the repair work done. The lines

⁴¹ "Locomotives Captured by Rebels at Martinsburg, Virginia" in June 1861 Harpers Weekly.

⁴² John F. Stover, History of the Baltimore and Ohio Railroad, 104, 105 (Purdue Univ. Press, 1987).

⁴³ John F. Stover, History of the Baltimore and Ohio Railroad, 106, 107 (Purdue Univ. Press, 1987).

however, were not repaired, as the Secretary of the War Department, Simon Cameron, turned his back on the B&O in favor of directing sources elsewhere. Interestingly, Cameron had a major investment interest in the Pennsylvania and Northern Central Railroads, who were profiting from the freight usually reserved for the B&O.⁴⁴

In early 1862, Cameron became U.S. Minister to Russia, and was replaced by Edwin M. Stanton, a close friend of B&Os President Garrett and formally chief counsel of the Central Ohio Railroad. By March 30th, 1862, the main stem from Baltimore to the Ohio River was again fully operational.⁴⁵ However, In May, General Jackson pushed federal troops north of the Potomac, and destroyed the repaired railroad bridges near Martinsburg. Then in September, 1862, Confederate General Robert E. Lee and his Army of Northern Virginia attempted to reach the major Northern states of Maryland and Pennsylvania, and cut off the B&O line that supplied Washington, D.C. Moving through West Virginia, Lee's troops targeted any B&O bridge they came across. Following their narrow loss at Antietam in mid-October, retreating confederate troops hit B&O yet again, targeting B&Os important railroad center at Martinsburg. Mimicking a Union practice against Confederate rail lines, Lee's soldiers would pry free the ties, heat them over bonfires until pliable, and then wrap them around trees so they could not be reused. These "Union Bow Ties" were initially founded and suggested by a railroad construction and engineering guru in the War Department.⁴⁶

An example of the type of destruction frequently encountered by repair crews can be found in the 1863 B&O annual report:

⁴⁴ *Id.* 107.

⁴⁵ *Id.* 107, 108.

⁴⁶ Timothy Jacobs, *The History of the Baltimore and Ohio; America's First Railroad*, 48, 49 (Brompton Book Corp., 1989).

October 19-20, 1862: Great destruction of company's property at Martinsburg. The polygonal engine house, the half round engine house, the large and costly machine shops, warehouse ticket and telegraph offices, the company's hotel and dining and wash house, coalbins, sand houses, blacksmith shop and tool houses, pumping engine for water station and connecting pipes were all destroyed. The destruction of tracks also commenced and continued...making a total of 37 ½ miles of track [destroyed].⁴⁷

Indeed, for fiscal year 1862, the B&O spent \$140,000, or over ten percent of their total expenditures, on simply repairing the bridges around Harpers Ferry, which were constantly targeted.

In December 1862, Lee's forces had departed the area and the B&O in Western Virginia was again behind Union lines. Repairs ensued and the line restored to service in early January 1863. However, in April of '63, and with the tide of the war beginning to lean in favor of the North, a 5800 man Confederate force launched the Jones-Imboden raids into Western Maryland and Virginia, with the primary goal of cutting the B&O in as many points as possible to ensure an elongated period of inactivity. A B&O stock train was captured in Altamont and redirected into Confederate territory, the approach to the Youghiogeny Bridge was displaced so a locomotive crashed into the river, water stations and engine houses were destroyed in Western Virginia, and miles of track were torn apart. Later that month, the raiders burned additional bridges at Coal Run, Buffalo Creek, Finche's Run, Cappel Fork, and Churches Fork before blowing up the largest iron bridge on the B&O line at the Monongahel River near Fairmont. In total, General Jones reported to Lee that his men had destroyed two trains, 16 railroad bridges, a tunnel, captured 700 Union soldiers, and seized 1000 cattle and 1200 horses.⁴⁸

⁴⁷ Thirty Sixth Annual Report of the Baltimore and Ohio Railroad, 42 (Baltimore, 1863).

⁴⁸ Timothy Jacobs, *The History of the Baltimore and Ohio; America's First Railroad*, p 50 (Brompton Book Corp., 1989).

The Jones-Imboden Raids occurred roughly the same time the plaintiff's filed the injunction. Clearly, the B&O had suffered massive damage and disrepair at the hands of the confederates over the preceding two years, and the plaintiff's argument that the Railroad was in no condition to hand out loans to foreign entities may have initially seemed like a plausible claim. However, the plaintiffs never provided any exact monetary figures, simply a rough overview that "...the cost of reinstating and repairing...will amount to a very large sum of money, and will tax the ability of the company severely."⁴⁹ A closer analysis uncovers that, in fact, the opposite was true.

An excellent account of the ability of railroads to still post a profit despite the widespread destruction can be found in an 1864 Annual Report of the Western Maryland Railroad (for whom, following the war, Mayor Chapman became President):

There can scarcely be a doubt...as with all other Railroads bordering on, and continuous [sic] to, the seat of war, there have been difficulties to encounter which, necessarily, involved expenditures and inconveniences, onerous and unavoidable. These, we are gratified to say, have been measurably overcome, and in some respects compensated for, by an increase in the transportation of passengers and materials incident to a condition of war. Whilst, therefore, a slight diminution is apparent in the freights accruing from mineral and agricultural products – iron ore particularly – still in view of all the facts there is no cause of complaint.⁵⁰

Analyses of the B&O's annual reports are consistent with this view. Despite the plaintiffs' claim that the repair costs amounted to "a very large sum" the B&O, indeed all railroads, profited immensely from the war. The error in the plaintiff's logic was that the company was perfectly capable of meeting and defraying the necessary expenses of continuous repairs along the war-torn line. A combination of increased fees, lucrative

⁴⁹ Mayor and City Council of Baltimore v Baltimore & Ohio Railroad, 21 MD 50, **4 (Md. 1864).

⁵⁰ Harold A. Williams, *The Western Maryland Railway Story: A Chronicle of the First Century: 1852-1952*, 41 (Western MD Railway Co., 1952).

government contracts, and wartime inflation created a windfall that far exceeded the costs incurred by Southern attacks. The annual reports of the B&O during the war reflect this⁵¹:

TABLE 8. Baltimore and Ohio Traffic and Financial Growth of Main Stem 1861-65

<i>Year</i>	<i>Passenger Receipts</i>	<i>Freight Receipts</i>	<i>Total Receipts</i>	<i>Expenses</i>	<i>Net Receipts</i>
1861	\$ 887,159	\$2,324,267	\$ 3,211,426	\$1,391,095	\$1,820,331
1862	1,769,497	2,712,362	4,481,859	1,427,206	3,054,653
1863	2,332,806	4,177,139	6,509,945	1,965,847	4,544,098
1864	3,250,307	5,327,385	8,577,692	3,270,509	5,307,183
1865	3,997,642	6,099,064	10,096,706	5,658,722	4,437,984

Net Receipts were up 292% in 1864, at the time this case was adjudicated, compared with the start of the war in 1861. Neither the district or appeals courts ended up addressing this issue. Indeed, none of the aforementioned secondary issues were touched in the decisions by either court. In terms of the Plaintiffs arguments concerning damage to the relationship with the Northwestern Virginia Railroad, the fact that other roads better connected Baltimore to the West, and the issue of funding to counter wartime attacks, the district court ruled:

There are other reasons of minor importance, suggested in the bill, against this application of said funds, but they are...not necessary to make particular reference to them. In regard to any objections to the actions of the defendant, in reference to this transaction...which look to the policy which the defendant may pursue in regard to the said Ohio Road...it is sufficient to say that this Court...cannot consider or be influenced by such objections, for the reason, that whilst a court of equity will restrict a corporation within the sphere of its chartered powers, it will not interfere with the course of policy, or with the plans and measures of expediency, which its officers or managers may think proper to adopt and pursue in the legitimate exercise of its powers.⁵²

⁵¹ John F. Stover, *History of the Baltimore and Ohio Railroad*, 116 (Purdue Univ. Press, 1987).

⁵² *Mayor and City Council of Baltimore v Baltimore & Ohio Railroad*, 21 MD 50, **23, 34 (Md. 1864).

Instead, both Courts' decisions simply focused on the issue of whether or not the supplement should be interpreted expressly or not, of which this paper has already addressed.

Because the Circuit Court did not challenge the Board's discretion in determining policy, and found that the loan was within the meaning of the 1836 supplement to the charter, the only thing left to determine was whether to maintain the injunction while the case made its way to the Court of Appeals. To this end, the Circuit Court held:

It is obvious...the only object I could have in continuing the injunction, would be, to prevent the property from being injured, that is to say, to prevent its being exposed to any danger from the act proposed to be done...Balancing the inconveniencies which would arise from continuing the injunction and from dissolving it, I should unquestionably run much greater risk of doing mischief by continuing the injunction than I can do harm by dissolving it. I think, therefore, exercising the discretion which is vested in the Court in cases of this kind, my proper course is to dissolve the injunction.⁵³

In theory, a losing plaintiff had a right to post a bond securing an injunction during the appeals process, the amount of which would be given to the defendant in the event the ruling was upheld. The Mayor attempted to exercise this clause by securing a bond with Baltimore city funds and notarized by the city treasurer. However, the Circuit Court rejected the bond, finding that the Mayor could not utilize funds outside the usual course of business in which the city appropriated their monies:

There is no ground to question that a corporation is bound by the action of a majority of the board of directors, expressed in the usual mode which they adopt in the transaction of the business of the board...It must appear that the majority of the board of directors assented to the execution of a contract of the class in question, or that they subsequently adopted it.' I am therefore of opinion, that the Mayor has no power or authority to execute a bond of the character

⁵³ *Id.* **46, 47.

offered; nor has any other officer of the city such power or authority; and must therefore decline approving such a bond.⁵⁴

On appeal, the decision for the Maryland Court of Appeals was written by Judge James Lawrence Bartol. Born in Maryland in 1813, Bartol practiced law until becoming Associate Judge of the Maryland Court of Appeals in 1857. From 1867 until his death in 1883, Bartol served as Chief Judge of the Court of Appeals. On June 28th, 1861, as part of the federal occupation of Maryland to undermine dissent, the military arrested Judge Bartol in Baltimore, and confined him in a casemate of Fort McHenry. He was released after a few days imprisonment without any charge being openly performed against him, or any explanation given.⁵⁵



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Judge James Lawrence Bartol

The decision was clean and precise, and in a few short paragraphs simply reinforced the holding of the Circuit Court:

We are clearly of opinion, upon the agreed facts in this record, that the Central Ohio Road is a road connecting with the Baltimore and Ohio Rail Road, within the meaning of the Act of 1836, and that consequently the appellee possessed the express power under its charter, to subscribe for or aid in its construction, to the extent declared in the Act. Under such a power the appellee might lawfully loan or furnish money to the Ohio Company to aid in its construction, and take a mortgage or other security therefor. We adopt the rule stated by the Court...that where the thing done by a

⁵⁴ Mayor and City Council of Baltimore v Baltimore & Ohio Railroad, 21 MD 50, **59, 60 (Md. 1864).

⁵⁵ J. Thomas Scharf, History of Maryland from the Earliest Period to the Present Day, p. 491 (Tradition Press, 1967 (reissue of 1879 ed.)).

⁵⁶ Online at MD State Archives,

<http://www.msa.md.gov/megafile/msa/speccol/sc3500/sc3520/001600/001625/html/1625images.html> (last visited 10/27/2011)

corporation is substantially that which its charter authorized, Courts have not been disposed to declare the Act unauthorized, though not strictly and literally the same as that mentioned in the law.⁵⁷

On account of the second appeal, regarding the denied bond:

We concur in the ruling of the Judge of the Circuit Court upon the question presented by the second appeal, and, for the reasons assigned by him in his opinion thereon, we affirm that order also.⁵⁸

Subsequent History and Conclusion

The B&O ultimately made their loan to the Central Ohio, which helped keep the fledging line afloat for the remainder of the war. It exited bankruptcy a few months after the South surrendered, reorganized, and on November 21st 1866, was leased by the B&O for 20 years at a rental price of 35% over the first five years and 40% thereafter. The line eventually became the Central Ohio Division of the B&O, and in 1868 achieved gross revenues over \$1 million, enough to hand out its first dividend to shareholders. The gauge of the line was made consistent with the B&O, and in 1871, the B&O constructed a bridge over the Ohio River which connected Benwood, West Virginia to Bellaire, Ohio.⁵⁹

The acquisition of the Central Ohio set off a golden age of the B&O with a series of Railroad acquisitions, mergers and expansions to the west and north. On January 1st 1865, the B&O became the major stockholder of the Northwestern Virginia Railroad, and the line ultimately became the Parkersburg Branch of the B&O.⁶⁰ Shortly thereafter, in the early 1880s, the B&O acquired the Marietta and Cincinnati line, which had linked with the Northwestern Virginia at Parkersville, and in 1889 became the B&O

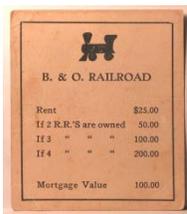
⁵⁷ Mayor and City Council of Baltimore v Baltimore & Ohio Railroad, 21 MD 50, **69, 70 (Md. 1864).

⁵⁸ *Id.* **71

⁵⁹ John F. Stover, History of the Baltimore and Ohio Railroad, 148 (Purdue Univ. Press) (1987).

⁶⁰ John F. Stover, History of the Baltimore and Ohio Railroad, 113 (Purdue Univ. Press) (1987).

Southwestern Railroad.⁶¹ The B&O Railroad gained immortality in 1904, when Elizabeth J. M. Phillips created a board game through which she hoped to explain the single tax theory of Henry George by illustrating the negative aspects of concentrating land in private monopolies.⁶² In April 1987, the B&O finally went out of corporate existence when it was formally absorbed into CSX Transportation; but *Monopoly* will live on forever.



B. & O. RAILROAD	
Rent	\$25.00
If 2 R.R.'s are owned	50.00
If 3 " " " "	100.00
If 4 " " " "	200.00
Mortgage Value	100.00



⁶¹ *Id.* 149, 150.

⁶² http://en.wikipedia.org/wiki/History_of_the_board_game_Monopoly (last visited 11/22/2011)