

and asked the treasurer to cast the deciding vote. The treasurer obliged, and Duke and Roberts considered that they had elected ten new directors of the B & O.⁵⁶

Fickey and Shriver responded with a lawsuit. Engaging as their counsel William Schley, a cousin of the Frederick County Schleys, they sought in the Superior Court of Baltimore City a writ of mandamus directing the president and directors of the B & O not to admit the state directors selected at the 3 June meeting. On 18 November 1862 the court issued the writ, declaring the June meeting to be "illegal and unconstitutional."⁵⁷

An exchange of correspondence between the factions followed and ultimately led to a resolution of the matter.⁵⁸ On 26 November, Duke and Roberts wrote to their colleagues, calling a special meeting for the 29th to replace one B & O director who had resigned, "to make such changes, in whole or in part, in the Directors on the part of the State in said Company, as shall seem necessary and proper to the said Board of Commissioners of Public Works when assembled; and to do such other business, as in the judgment of said Commissioners shall appear proper when they are assembled." Fickey and Shriver responded on the 29th that they agreed to meet for the purpose of replacing the one director, "if you will limit the business of the meeting to that object; or if you will give us assurance, that you do not design to force a change of directors on the part of the State, through the action of the Treasurer, if we should attend a meeting, today, of the Board."⁵⁹

The next entry in the board minutes was the brief comment that, "after the above correspondence informal interviews were had, which resulted in a call for a meeting of the Commissioners of Public Works, at Barnums Hotel December 2, 1862." The four commissioners met on that day—for the first time in more than eight months—and unanimously elected *ten* state directors to the B & O.⁶⁰

The next meeting of the board was on 1 June 1863, the occasion being the annual C & O stockholders' meeting. This time Duke and Roberts stayed away, and so the meeting was adjourned for the lack of a quorum.⁶¹

Duke and Roberts were replaced in November 1863, their terms having expired, but some measure of disharmony continued. In the 1864 session of the General Assembly a bill was introduced to increase the number of B & O directors selected by the private stockholders. At the time there were thirty directors, the state selecting ten, Baltimore City eight, and the private stockholders twelve. The bill would have restructured the board and allowed the private capitalists to elect thirty directors, thus enabling them to control the company. At their 17 February 1864 meeting the four commissioners unanimously adopted a motion opposing that bill, but, on a tie vote, they declined to endorse a proposed "address" to the General Assembly on the subject. The "address," sponsored by Shriver and Andrew McIntire, who apparently favored giving the private owners control, but not to the extent provided in the bill, said, in part:

The history of the past has shown that works of Internal Improvement when managed by Political Power have been unsuccessful; it is not in the power of the Commissioners to find

56. BPW Minutes, 3 June 1862, vol. 1851-83, p. 124. Actually, Duke and Roberts "continued" in office three of the incumbents—Edward Hammond, William S. Reese, and Isaac Nesbit—and appointed seven new directors.

57. *Edward Shriver et al. v. the Baltimore and Ohio Rail Road et al.*, Baltimore Superior Court, Civil Papers, R 37, MdHR 602-00-152, box 21.

58. Although the underlying dispute was quickly resolved, an appeal was taken from the court's decision. The appeal was docketed in the *Court of Appeals in December 1862*, where it remained dormant until 1866. Finally, there is a note in the April 1866 term of the Court of Appeals that the parties had agreed to abide by the lower court's decision. Court of Appeals, Docket, WAS, pp. 44, 403, MdHR 634.

59. BPW Minutes, 26, 29 November 1862, vol. 1851-83, pp. 128, 130-31.

60. *Ibid.*, 2 December 1862, pp. 135-36. One of the legal issues raised in the action filed against Duke and Roberts was that the state directors were appointed in December for a one-year term and could not be replaced in June without good cause. The December elections, at the time, were the annual ones.

61. *Ibid.*, 1 June 1863, p. 136.