

LIVERPOOL DOCKS AND THE
MUNICIPAL COMMISSIONERS' INQUIRY OF 1833
FOR LIVERPOOL

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A study of the Municipal Commissioners' Inquiry of 1833 into the affairs of Liverpool shews something of the tempers and strains emerging in the Reform Age. It also portrays the relationship of the town of residence to the town of transit, and the early stages of the movement which led to the establishment of an autonomous Port Authority.

Early in 1833 a select committee of the House of Commons was appointed to inquire into the state of municipal government throughout the country and to report on defects and measures for their remedy. After examination of witnesses the committee agreed upon a searching inquiry by commission. The commission opened in London on 2 September 1833. They decided that two of the commissioners should attend in each of a number of selected towns and hold inquiries there. Accordingly, on 1 November the mayor of Liverpool, John Wright, received a communication, dispatched from Middlewich,⁽¹⁾ indicating that two commissioners, George Hutton Wilkinson and Thomas Jefferson Hogg, would arrive at Liverpool on the evening of the following Saturday; it requested that the mayor be prepared with information as to the limits of the corporation's territory, its charters, titles, officers, modes of bestowing freedom, elections, juries, patronage and other matters; and it concluded by asking for information upon the general state and prospects of the town. A tall order, one might think, considering the very short time available, but evidently the corporation's officers were well prepared.

The common council of the time was self-elected and the freemen—at one time a reasonably representative body—were in 1833 a very small proportion of the population. The council had become increasingly tory during the reign of George III—

⁽¹⁾ *Report of the Proceedings of a Court of Inquiry into the existing state of the Corporation of Liverpool* (1833). The report used is that printed by order of the common council of Liverpool and dated 1833. The author is indebted to the Mersey Docks and Harbour Board for the loan of the copy in question, which is apparently one lent to Sir John Tobin in 1844.

supporting the crown against Wilkes and Pitt against Fox. In fairness it may be said that probably this policy represented the wishes of many of those who had no vote, especially when the slave trade and the prosperity it brought were increasingly threatened in the first quarter of the nineteenth century. But stresses and strains were developing. The rich tory mercantile families were meeting the challenge of new traders and ship-owners, some at least of whom were dissenters.⁽²⁾

Before turning to the proceedings of the inquiry it is interesting to note that the second of the two commissioners, Thomas Jefferson Hogg, was the one-time rebel friend of Shelley, the man who had insisted on sharing Shelley's expulsion from Oxford, following the publication of the pamphlet *Necessity of Atheism*. Hogg drifted very far from his early enthusiasm for what would now be called left-wing ideas, and within a few years was singing the praises of tradition, sport and the public school.⁽³⁾ He read for the Bar, and, disappointed of the chair in civil law at the newly-formed University of London (of which he had some hopes through the influence of Brougham), he accepted the commissionership upon which we now find him engaged. He had first accepted the office of secretary, which he would have preferred, as he would not then have been a party to the findings of the commission, but this office was made one of patronage, and so he became a commissioner.

The point that at once strikes the reader of the report of the inquiry is that so many of the problems with which it deals are common today. One need only mention municipal boundaries, accommodation for shipping in the port and, naturally, charges and the sharing of the burdens of expenditure. But also one reads of serious matters seldom encountered nowadays, such as accusations of bribery, nepotism and injudicious land speculation by prominent men.

The inquiry opened at the old Sessions House in Chapel Street with a brief statement from the senior commissioner as to the procedure to be followed. Formal documents having been produced, the Town Clerk, Mr. Thomas Foster, submitted plans of the limits of town and port and described the general jurisdiction. The limits of the port were "as far as a certain place in Hoylake called the Red Stones and from thence all over the River Mersey to Warrington and Frodsham Bridges". The jurisdiction was not exclusive: in other words, the county magistrates as well as the borough magistrates could act within

⁽²⁾ Sidney and Beatrice Webb, *English Local Government—Manor and Borough* (1908), Vol. 3, p. 490.

⁽³⁾ André Maurois, *Ariel*, Penguin Edition (1935), p. 136.

the borough and the port. The Town Clerk then outlined with great clarity the governing charters, as corrected by that patient old scholar Charles Okill. Mr. Foster was undoubtedly the outstanding figure of the inquiry: he knew everything, could deal with the most irrelevant point without loss of temper, and he shewed at times a sense of humour surprising in a public official on trial, so to speak, as the representative of the organization of which he was a part and whose efficiency and rectitude it was his duty to uphold.

Naturally attention became concentrated at an early stage on the constitutional history of the dock trustees. Very briefly, the history of the government of the dock estate had been as follows. The port had been a natural haven certainly as far back as the time of King John; to deal with the tiny ships of those days it had needed only certain rudimentary quays and wharves, which are vaguely alluded to in old records. The emerging trade with Virginia and the tendency for traffic to be diverted from London following the Great Fire led the corporation to build the Old Dock (one would hesitate to call it the first, which was probably the Greenland Dock in London, now absorbed into the Surrey Commercial system): this was authorized by the first Liverpool Dock Act of 1709. The growth of an empire and its overseas trade led to the development of the dock estate and Acts culminating in that of 1811. This changed the constitution of the trust into that of a body corporate (although still the corporation), and in 1825 this arrangement was further amended to provide for eight of the twenty-one members of the Dock Committee being dock ratepayers: their chairman was, however, to be a member of the common council, who were to continue as trustees and to have a power of veto. Certain of the provisions of this Act were the subject of criticism at the inquiry, it being forcibly put to the commissioners, by what may be called the "opposition", that the amended constitution had been decided upon by a process of parliamentary bargaining in which the users (as opposed to the trustees, even though certain of the common council were themselves users) felt that they had been driven into a corner owing to the intense need of additional accommodation. Ever since the Napoleonic Wars the demand for space for ships had been growing more pronounced, and the hard pressed users, particularly those who were agents for foreign ships, felt that the port would tend to remain static as long as the power of veto remained. They felt that the council would be reluctant to impose even a temporary burden on the finances of the town.

The pressures involved in the parliamentary negotiations of

1825 were described by Mr. Radcliffe, on behalf of the opposition, in these words: "The merchants who acted on that occasion, pressed for dock accommodation, many of them teased by captains in their counting houses, and hardly knowing how to meet them, were compelled at that moment to take the best Bill they could get for the extension of the docks." He went on to argue that the term used by the Town Clerk in contending that the merchants consented to the Bill should have been "according to my notion of the English language 'submission' rather than 'consent' ". The Bill, as eventually it became law, owed much to the mediation of Mr. Huskisson, M.P. That gentleman qualified his opinion on the revised constitution with the advice that if such a constitution were found in practice to be inadequate to confer a due system of representation the evil might be remedied by allowing a larger infusion of ratepayers. Mr. Huskisson was held in deservedly high esteem by the mercantile community. One of his biographers,⁽⁴⁾ C. R. Fay, quotes the dictum of a merchant concerning this Bill that "if Mr. Huskisson will state his approval of these proposals the merchants have so much respect for his opinion that they will accede to them".

The Town Clerk's position was complicated by the fact that at the time of the negotiations over the 1825 Bill he had been solicitor to the Dock Committee. The incompatibility of his position, somewhat confused by the fact that he had later become a member of the common council, was naturally made use of by the opposition. The Dock Committee put in a formal protest that they did not come within the scope of the commission, having been appointed by Parliament; but none the less they directed their officers to attend and give information.

A petition to parliament calling for an amendment of the constitution of the Dock Committee was read. A sharp exchange took place as to whether all the signatories to this document, drawn up some months previously, were in fact dock ratepayers. There seems little doubt that the opposition were entitled to claim that they were. The main contentions of the petitioners were:

- (a) That the interests of the two estates (town and port) were often opposed to each other.
- (b) That the powers of the council over the estate of the corporation were unlimited, whereas their powers over the dock estate were limited to defined purposes, and therefore the former interests were preferred.
- (c) That patronage existed.
- (d) That broadly it was wrong that the interests of two great estates should be under the protection of the same individuals.

⁽⁴⁾ C. R. Fay, *Huskisson and His Age* (1951), p. 375.

Three quotations from this document are of interest:

"The Liverpool Docks are not, like those of London, an undertaking for the profit of any Company but are strictly a trust for the public."

"Your Petitioners submit that if the Dock Estate had been represented by Trustees distinct from the Corporation it may reasonably be supposed that they would have had the common forecast to secure the strand that might be required for dock purposes before its value was so greatly increased."

"The administration of the Trust should be placed in the hands of responsible representatives whose duties shall in all cases coincide with their interests."

The sharp divisions of opinion between those who wished to change and those who wished to conserve became more evident after the reading of the petition, which seemed to bring to a head the smouldering resentments of those concerned. Mr. Robert Gladstone (not to be confused with Mr. Robertson Gladstone, a member of the common council) brought a degree of balanced judgment to bear in his evidence. Although he spoke as one in favour of a more complete autonomy for the dock estate, he did not draw such red herrings as accusations of nepotism across the trail. But he did say that the ratepayers—meaning dock ratepayers—should have a predominant share in the management of the port.

The harsher note returned with the evidence of Mr. William Brown, an American merchant, who attacked Mr. Askew, the Harbour Master, on grounds of inefficiency. This officer was the subject of a great deal of comment, owing to his holding, or having held, other interests in the port. The extent of his surrender of such other interests consequent on his appointment was a matter of some difference of opinion. Mr. Brown had well in his mind the committee of users of the port on the subject of town dues, and naturally he referred in strong terms to this controversial subject, which will be dealt with in greater detail later. He was not only one of the most able of Liverpool's business men but a founder of the great firm of Brown Shipley.⁽⁵⁾ He agreed that he and his colleagues would have assented on almost any terms to get the Bill of 1825 through parliament, so pressed were they for more room for shipping. Like others, he put forward the charge of bribery—subsequently hotly denied by other merchants and shipowners. Mr. Askew interjected that he had indeed been offered a bribe and had refused it, to be told by the gentleman offering it that it evidently could not have been enough, "as every man had his price". The protests of those who said they had never bribed were greeted with laughter.

The commissioners, however, refused to put themselves in the position of trying individuals, maintaining that they were there to enquire into questions of corporate capacity only.

⁽⁵⁾ Aytoun Ellis, *Heir of Adventure, a History of Brown Shipley*.

Much of the contention between town and port arose over the two problems as to whether the docks should be extended and, if so, in which direction. The Town Clerk, with very pertinent questions, sought to shew that there were individual claimants for southern extension for private reasons, whereas the *users* of the port were aiming north. None the less, one feels that the interests of the town were to a considerable extent linked with a southward extension, which would have strengthened the corporation's claim to absorb those parishes not then part of the borough. The opposition repeatedly emphasized that the corporation had retained in their ownership the land around the docks, other than the marginal quays, had sold on occasion to themselves as trustees of the docks, and had also retained the graving docks. These procedures, it was contended, frustrated development and would prevent the creation of "warehouse docks" on the London model.

The problem of land was, however, as it has always been, the prime consideration of a port subject to the necessity of preserving its waterway, yet hemmed in by the lie of the land on its shoreward side. This became evident during the next stage of the inquiry, when the question of land purchase in Cheshire came to be considered. The Town Clerk gave an admirably concise statement. He shewed at the outset how the two problems of conservancy and land acquirement had in a sense conjoined. The corporation at that time acted as unofficial conservators of the river. (It will be recalled that this was prior to the setting up of a Mersey Conservancy Commission under the 1842 Act.⁽⁶⁾) They had become increasingly anxious regarding encroachments upon the river by frontagers, and had obtained a monumental report from a group of eminent engineers. One current suggestion was that the corporation should become purchasers of the frontage land, and this was one of the first motives prompting them to acquire land in Cheshire. But the story then developed. The Town Clerk stated that in the year 1828 there had been a strong opinion in Merseyside circles that a joint stock company was to be formed by the proprietors of estates in the hundred of Wirral and others in order to establish a port to communicate with the Mersey at Wallasey Pool and from the pool westward to sea by a ship canal emerging at Hilbre Island. The corporation had therefore started acquiring parcels of land in the vicinity, and, as might have been expected, suggestions that private interests were involved at once arose. The opposition to the establishment of a rival port was the basis of the whole operation.

⁽⁶⁾ See TRANSACTIONS, Vol. 105.

Sir John Tobin's name had been referred to, and he elected to give evidence on oath about his part in the involved transactions that ensued. Sir John and Mr. Laird owned land in the vicinity of Wallasey Pool, and negotiations for sale to the corporation were commenced on the basis of a solemn engagement by the corporation that they would not let the grand project of a canal drop. Apparently without Sir John's knowledge, Mr. Laird negotiated a sale of his own piece of land, and Sir John then said that it was of no use for him to stand alone, the beauty of the scheme having been destroyed. It would seem that Sir John Tobin had perceived that the port of Liverpool was in fact what it afterwards became, an entity comprising both sides of the river.

Then came Mr. John Taylor with an attack on the corporation for having acted as conspirators against the public good in preventing the rise of a rival port and stifling competition. Mr. Taylor had much justice on his side, having regard to the spirit of the times, but he did not make the best of his case, being in ignorance of the problems concerned and the legal position of users of the port of which the intended rival undertaking would have formed a part. The Town Clerk made mincemeat of him.

An attack then developed on this question of town dues. Mr. Bolton (friend of Huskisson) was the first to give evidence, and he was well fitted so to do, having studied the question deeply. He made great play with the use of the revenues from town dues by the corporation for the establishment of churches—"exclusively for the Established Sect", and he also alluded to patronage—"of which the gentleman opposite [Foster, presumably as he had relatives in corporation employment] and his family afford an extraordinary instance". It was Mr. Bolton's firm which had taken the initiative in a famous town dues case by refusal to pay.⁽⁷⁾ A final settlement following the hearing by Lord Chief Justice Denman was still pending.

The town dues of the Port of Liverpool are an ancient toll, the origins of which are lost in obscurity: so, at least, a modern authority may seem to indicate. Originally they seem to have been part of the privileges which passed to the town in the Henry III Charter, (even if not earlier, for Sir James Scarlett in opening the plaintiff's case in the Court of King's Bench on 14 February 1833 traced their origin to the crown, citing the familiar record in Domesday Book concerning the land between Ribble and Mersey). They were similar indeed to those rights of the Hansa, or groups of merchants, which existed in some form or other

⁽⁷⁾ *Transcript of Inquiry as to Local Shipping Charges* (1856), Appendix 12.

in the North European ports and in this country, and which contributed to the growth of such great international centres as Antwerp. The dues might also be regarded as coming within the meaning of the old term *jus regale* of the crown. A seventeenth-century jurist, Lord Hale,⁽⁸⁾ maintained that the crown had the right to create ports; and Blackstone, in the next century, contended that the crown rights to such tolls were twofold—(a) because the monarch gave his subject the right to depart and take his goods with him, and (b) because the crown was bound of common right to maintain and keep up the ports and havens.⁽⁹⁾ On the other hand, the Webbs in their *English Local Government*⁽¹⁰⁾ state that “the Town Dues of Liverpool, like those of Bristol, were really local taxes, imposed from time immemorial on the ‘foreigner’ by the authorities of the Town, as part of its corporate income”.

Whatever their origin, they formed part of the key tolls which, in 1628, Charles I, hardpressed financially, sold to certain parties as trustees for the City of London, in consideration for loans. The London citizens (Ditchfield and others) resold to persons on behalf of the Molyneux family, and until 1672 that family appear to have held the purchase independently of the corporation. But on 27 May 1672 a lease was granted by Lord Molyneux and his trustees to certain gentlemen of Liverpool for one thousand years. In 1700 Lord Molyneux granted a new lease, and in 1777 the Liverpool Corporation acquired the title. One of the perennial disputes concerning town dues had been fought out at the end of the seventeenth century. This was the question of the right of the London cheesemongers, who bought cheeses in Lancashire and Cheshire, to claim exemption as freemen of London. The suit came before the Exchequer Bar and resulted in a limited exemption to the London claimants. In consequence, many of the leading merchants of Liverpool became freemen of London through certain of the minor companies, thinking thus to exempt themselves from payment of these duties for £40 or £50. However, in 1799 it was declared that only resident freemen would be exempt. It appears, though, that there were merchants of Liverpool who were freemen of London and resided there for about a month each year, thus rendering themselves exempt from payment of Liverpool town dues.⁽¹¹⁾

⁽⁸⁾ Lord Hale, *De Portibus Maris*. Quoted in *Transcript of Inquiry as to Local Shipping Charges* (1856), p. 261.

⁽⁹⁾ Quoted by Town Clerk of Manchester—*Transcript of Inquiry as to Local Shipping Charges* (1856), p. 35.

⁽¹⁰⁾ Sidney and Beatrice Webb, *Manor and Borough* (1908), Vol. 3, p. 488.

⁽¹¹⁾ *House of Commons 1835*, Vol. 26.

This question of the privileges of freemen was one of the two vexed questions concerning town dues. Freemen of Wexford, Waterford, Bristol, Lancaster and London were exempt from Town Dues and it was this fact, and the fact that some of their fellow-citizens had been able to obtain a similar advantage by purchase, that stirred the opposition into activity. The hearing of the case initiated by the refusal of Bolton Ogden to pay town dues had been brought on a little earlier in the year 1833 before the Lord Chief Justice. The verdict was for the corporation, but the defendants lodged a Bill of Exceptions. Both sides met after the inquiry in Liverpool and finally agreed that each party should pay its own costs and thus terminate these protracted proceedings. One might comment that the Municipal Reform Act of 1835, to the provisions of which this inquiry, with other similar inquiries, contributed so much, left the town dues with the corporation to be absorbed into their general purse for the good of the borough.

The gravamen of the town dues controversy rested on two criticisms: (a) the unfair advantage held by the freemen; and (b) the diversion of the revenues of the port to the town, freely admitted by the Town Clerk, who contended that those with business in the port were clearly saved rates. (He did not deal with the case of the up-country trader.) As regards the first point, one may recall the famous pamphlet of Harriet Martineau,⁽¹²⁾ published twenty years later, and her acid comment on the gains to such families as the Shands, Horsfalls, Gladstones and Sandbachs; as for the second point, one may well reflect that the case for town dues being looked upon as town revenue rested upon the principle, so lightheartedly accepted by the trading community in the first Dock Act of 1709, that rates must be levied on the users for maintenance, nothing being said about a surplus.

Mr. Foster, "as an Englishman", regretted that power should lie with the Court of Chancery to "squeeze out of the Common Council the evidence of their right to Town Dues". In 1856 Foster's successor, Mr. Shuttleworth, was asked whether he thought there was hardship in asking people to produce the title by which they claimed to impose a tax on their fellow subjects: he said, "No, and I think there has been no unwillingness on our part to produce our title."

The Municipal Reform Act of 1835 provided for gradual but ultimate extinction of the privilege of the freemen.

⁽¹²⁾ Harriet Martineau, *Corporate Tradition and National Rights*. (Pamphlet issued in 1856 by the association formed to obtain the right appropriation of the Liverpool town dues.)

The contest of 1833 drew slowly towards its close—a significant close. The Town Clerk made a statement, occupying much of two days, which proved him to have been a very considerable advocate. He had logic, reason, humour and a courtesy which was in contrast with the manner of some of his opponents. "I am bold enough," said he at the outset, "as an Englishman to state this in the face of my countrymen in my native town that it does appear to me that one of the most essential privileges—nay I should say the birthright—of Englishmen has been wanting: I mean that the persons charged, if they are charged with any offence, have not had the bill of indictment . . . put . . . into the hands of the Court." Mr. Foster did not become embittered over the question of nepotism even though personal allegations had been made. He dealt with each relative said to be concerned (the list being admittedly a formidable one) and concluded "I have now done with all personal reference to myself and my situation". In proceeding to deal with other references to members of the common council and the relationships involved he alluded to Blackstone's table of consanguinity, adding "I really do not know how far the ingenuity of those who have framed this list" (i.e. of the common council relationships) "has carried them unless they have found such propositus in a celebrated ancient known as Dicky Sam." Further, he made a good workmanlike defence of what the corporation had done for the port. Even Mr. Bolton described Foster's speech as able and eloquent. But Mr. Bolton also observed that town dues were borne by the merchants of North and South America, of the East Indies and parts of Europe, and none of these parties had any consideration therefor in the benefits of the town's improvement. (It was on this very point that parliament in 1857, in a commercial world already much changed from that existing at the time of the passing of the Reform Act, established an independent trust with the power to collect the town dues.) So with charge and counter charge the inquiry reached the end of the twenty-fourth day. Its findings influenced the Municipal Reform Act of 1835, but the respite which that Act gave to the municipal control of the dock estate was short lived: though, according to the Webbs, "the vigour and statesmanship" of the corporation of Liverpool, in this respect, contrasted strikingly with the "total absence of courage, strength or foresight" shown in London.⁽¹³⁾

The General Report of the commission responsible for investigating municipal governments, in so far as it deals with Liverpool, refers to the petition of 20 February 1833, concerning

⁽¹³⁾ Sidney and Beatrice Webb, *Manor and Borough* (1908), Vol. 3, p. 691.

which a House of Commons committee had found (29 July 1833) "That bribery and corruption have existed in the election of Members of Parliament and Chief Magistrates for the Borough of Liverpool and in some cases to an enormous amount".⁽¹⁴⁾ The General Report then alludes to the Wallasey Pool project and the fact that the mayor of the day (1828) and the chairman of the finance committee "considering that the rival Port might militate against the interests of the Town undertook on their own responsibility to purchase all the property they could acquire in Wallasey Pool to counteract the scheme". It proceeds: "It is not easy to comprehend the plausibility of a plan which was to transfer the trade of Liverpool to the estuary of the Dee for the mere sake of avoiding some difficulties in the navigation . . . which have been found . . . not of sufficient magnitude to arrest the hitherto unrivalled progressive importance of her commercial state." However, no charge of collusion or corrupt practice was made against the corporation in respect of this or any other of their investments. The concluding paragraph of the report, signed "George H. Wilkinson" and dated "May 11th, 1835", reads:

"Where interests so great and various were at stake it was to be expected that a diversity of opinions would be found to exist on the precise nature and extent of the reforms recommended. Whatever may be deemed the most safe and efficient remedy for the evil (which it is not my province to suggest) I feel myself bound to report that it does appear to me to be vain to expect that any Body constituted (as we find the Trustees of the Liverpool Dock Estate) of individuals clothed with and retaining an official authority wholly derived from their own Body and owing no responsibility beyond the pale of their own constitution (let the individuals be the most intelligent and patriotic in the world) will ever exercise that authority uniformly for the commonweal or avoid the just censure of acting in frequent instances for their own aggrandisement alone."

The merchants trading through Liverpool were probably disappointed that the Act of 1835 did not give them the right to have the say in applying the money they paid for the benefit of the port. In fact the Act (perhaps, and this is disputed, owing to an error in drafting) ruled that such tolls as the town dues must be paid into the general municipal revenues.

It is of interest to glance at the ensuing history. In 1851 the American Chamber of Commerce, that powerful association of Liverpool merchants, promoted a Bill to amend the constitution of the Dock Committee but providing for a majority

⁽¹⁴⁾ *House of Commons 1835*, Vol. 26, p. 2710.

of dock users. A compromise was eventually reached by which the number on the committee was increased to twenty-four, twelve elected by the council and twelve by the ratepayers. The power of veto remained. In 1853 the Board of Trade appointed a commission to enquire into the charges leviable at U.K. ports. The commission laid down certain broad principles of port administration, which provided for a single body of conservators for each public harbour and for the transfer of municipal tolls to such conservators. In 1855 the Liverpool Dock Committee applied to parliament for an Act to enable the trustees to purchase land for docks at the north end of the town. The Birkenhead trustees and the Birkenhead Dock Company also had Bills in Parliament. Birkenhead docks were in a state of insolvency and the trustees were successful in having Liverpool forced to take them over on terms—the committee of the House deciding that it was expedient that the works in hand at Birkenhead should be finished, and that Liverpool was the only body to take on the task.

It may well be judged that the inquiry of 1833 was a stepping stone to what in the nature of things became inevitable, the setting up of an entirely independent Dock Trust to govern the whole port on both sides of the Mersey. The Trust eventually set up under The Mersey Docks and Harbour Act of 1857 was required to act for “the benefit of the Port of Liverpool, and of the shipping and trade of the said Port”.