

## CHAPTER FIVE

### IMPLEMENTATION OF THE ACT: HOW IT WAS DONE

#### 5.1 The Commission of Sewers: membership

This radical experiment in river improvement was authorised and supervised by a Commission of Sewers. This in itself is an interesting feature, for the experiment necessitated an approach and a use of powers beyond those normally associated with such bodies.

Owing to a certain inefficiency in Chancery enrolment procedures during Elizabeth's reign no entry for this commission appears in the Patent Rolls, and other recording procedures had not yet been developed.<sup>1</sup>

It is known that the commission passed the Great Seal on 27 September 1575, and a document dated 1589 implies the traditional limits of jurisdiction, Ware to the Thames.<sup>2</sup> No complete list remains, but the names of 42 commissioners can be obtained from various sources. In October 1587 a list of members 'of the last Commission' provides 22 names; in 1589 a list 'of the olde Commissioners that be yet lyvinge' notes 18 names, 3 of which are not found in the 1587 list; and an additional 17 names appear in the attendance rolls of the five Courts of Sewers for which records remain.<sup>3</sup>

Of the names so obtained, all are either important state officials, representatives of the City of London, or landed gentry from the three riparian counties of Essex, Middlesex and Hertfordshire. The membership is thus typical of the expected composition of such bodies.

What was not typical is that the initiative and support for the improvement scheme came from the highest levels. On the eve of the commissioners' appointment, William Vallans informed his father

nothing doubting but that hereafter, when all thinges be finished, that by meanes of the Lord Treasurer, maister Fanshawe, and other worshipfull men be in hand for the amendment and scowring of that river, you and I both shall see ... good big boates and vessels passe too and fro betwixt London and Ware

Later an opponent of the improvement scheme, Robert Wroth, made veiled references to 'the Lordes of the Counsell' who had been responsible for the work.<sup>4</sup>

Dr Joan Thirsk has emphasised the role that state officials played in the numerous new projects which were encouraged during Elizabeth's reign. The improvement scheme for the Lea can be seen as another example of these developments.<sup>5</sup> In particular, two names are closely associated with improvements along the river, those of Thomas Fanshawe and Lord Burghley.

Fanshawe, the Queen's Remembrancer, had close links with Ware. He had completed the purchase of the local manor in 1574-5, and was to purchase Ware Mills in 1587. He also helped the townsmen erect a new market house and apply for new annual fairs.<sup>6</sup> Fanshawe played an important role in the work of the commission. He wrote to Burghley informing him of decisions and reporting progress, he took part in surveys, and met local residents to discuss problems. Later he was to lead investigations into the riots in 1581 and 1592, and was to defend the bargemen when their interests were threatened by the road carriers.<sup>7</sup>

His close involvement with the fortunes of the town of Ware must explain much of his interest in the efforts to improve the Lea. In fact opponents of the scheme attacked him personally, accusing him of acting solely out of motives of personal gain. To such accusations he replied:<sup>8</sup>

the making of that passage hath cost me above one hundreth markes and I receyve onely this comoditie that I have London beere brought hyther for my money for caryage, and all other carrage better cheape by half than by land carrage and other profytt I have none for all the houses be holden by a certyn rente eyther by chartes or copies so as for any thing I see I and my sonne after me shall not have my charge in lx yeres

Despite such protestations, his closure of the navigation above Ware in 1595 (see 4.5) suggests a greater regard for the interests of Ware than for the navigation as a whole. His support may have been a matter of prestige rather than profit.

Burghley's close interest is also much in evidence. Indeed Camden stated that it was he 'to whom more particularly this river is obliged for the recovery of its ancient channel'. His attendance is recorded at several meetings of the commissioners despite pressing affairs of state. He was kept informed of developments, and seems to have vetted the commissioners' orders before they were issued. In addition he made notes on the navigation and amendments to maps of the river in his keeping.

Burghley had a reputation for interest in and support for new projects, and he too had close links with the area. He had just completed the rebuilding of Theobalds House in Cheshunt. It may not be mere coincidence that the family also had property at Stamford on the river Welland, another river for which ambitious improvements were proposed at this date.<sup>10</sup>

Burghley may have had divided loyalties. His neighbours at Theobalds were amongst those who most resolutely opposed the improved navigation. These neighbours always appealed to him for help, and on one occasion specifically referred to his sympathetic hearing of their grievances, but to no avail.<sup>11</sup>

Besides these two, there were several other prominent statesmen who were sufficiently interested to attend meetings of the commissioners:- Sir Walter Mildmay, Chancellor of the Exchequer; Henry, Lord Hunsdon, a Privy Councillor; Sir Ralph Sadler, Chancellor

of the Duchy of Lancaster; Sir Francis Walsingham, Principal Secretary; George Freville, Second Baron of the Exchequer; Sir William Wynter, a Principal Officer of the Navy Board; Thomas Powle, Clerk of the Crown; Henry, Lord Compton and Thomas, Lord Wentworth.

Some of these ex-officio members may have had particular interests they wished to defend or enhance, but interest in the project must also have been a strong factor in encouraging their attendance.

The City of London were also well represented. Sir Ambrose Nicholas, when Lord Mayor, William Fleetwood, the Recorder, and George Heaton, the Chamberlain all attended. In addition Sir Rowland Hayward, a senior aldermen who had been the Lord Mayor in 1571, and two other aldermen, Edward Osborne and John Marshe, were also members. Hayward, Fleetwood and Marshe were also M.P.s, whilst Osborne had similar aspirations.<sup>12</sup>

12. *Osborne and Marshe had property in Tottenham, and Marshe may have been steward of the manor:*

Another body represented was the Duchy of Lancaster, presumably because of their interest in the upper river. Besides the Chancellor, two other officials were also members:- John Purvey, Auditor of the South Parts, and John Taylor, the Receiver for the Home Counties. Both had local interests too. Purvey, a Hertfordshire J.P, was married to the daughter of the lord of the manor of Wormley, and lived there. Taylor lived at Enfield.<sup>13</sup> Many of the other members were also local J.P.s, but not all.<sup>14</sup> They were however the normal local gentry to whom the tasks of local administration were entrusted.

## 5.2 Commission of Sewers: administration

If ever formal minute books were kept, they no longer remain. Sufficient records are extant to give some idea of how the commissioners worked but major gaps do remain.

For instance, commissioners met formally at Courts of Sewers, and there is record of such Courts being held in the Star Chamber, at 'Mr Marshes dwelling house in Bromley', at the Four Mills in Bromley, and at an unspecified venue at Hertford.<sup>15</sup> However nothing can be said about how frequent such meetings were, about how the meetings were conducted, or about how they coped with the differing functions of surveying the river, hearing objections to their orders, checking whether their orders had been obeyed, and discussing the financial arrangements. In addition some of Fanshawe's letters imply that informal groups of commissioners were often responsible for pursuing the work.<sup>16</sup>

Evidence does remain of how an appeal was handled. In October 1576 the commissioners ordered that a stream on the east bank, the property of a Mr Hicke, should be blocked off before 20 November, or else a fine of £5 would be levied. Hicke appealed, and four commissioners, including Robert Wroth, were ordered to take another view. They compromised, and allowed Hicke to take water out of the river through a pipe inserted in

the dam.<sup>17</sup> The right of such appeal was specifically mentioned when the commissioners issued their orders,<sup>18</sup> but how often advantage was taken cannot be ascertained. More is known of how the orders were implemented once decisions had been taken. What emerges is the important role played by officials known as dikegraves.\* Such officials were involved in fen drainage schemes,<sup>19</sup> but there is no evidence of their involvement along the Lea at any date either before or after this particular commission. Perhaps the different approach of this commission stimulated fresh administrative initiatives, even if the name seems inappropriate to a river navigation.

All orders made by the commissioners were sent to the local dikegraves, who seem to have been appointed at the parish level. The dikegraves first responsibility was to have the orders read out at church as soon as possible, and they were then to see that the orders were obeyed and that the commissioners were kept informed of developments.

If particular property owners had not fulfilled the orders within the specified time, and if there were no extenuating circumstances such as flooding, then the dikegraves had authority to carry out the work and bill the recalcitrant landowner. As a last resort they had powers of distraint if the bill was not paid.

The dikegraves were also responsible for ensuring that general orders, those which could not be issued to a particular property owner, were carried out. To meet the costs of this work they could summon four of the 'Jurates within your precinctes' to estimate and confirm their expenses, and fix a local rate based on the amount of land held which was 'subjecte to the Surroundinge of the Said Water of Ley'. This information was then sent to the commissioners, who had the power to levy such rates. The dikegraves were then responsible for collecting them.<sup>20</sup>

An important and arduous task. The names of four are known, John Englestone (or Egleston) and Thomas Penyngton were the dikegraves for Tottenham, whilst Thomas Pyckeringe represented Stepney and Henry Freeman Stratford at Bow. All were of the status of gentlemen.<sup>21</sup>

21. *Thomas Penyngton was either the citizen and currier who died in 1593-94, or his son, both of whom lived at Tottenham. Thomas Pyckeringe of Stepney died in the 1580s. All his relatives were from Yorkshire, Northumberland or Cumberland:*

This suggests that most parishes along the river must have had such officials, but whether they were appointed by the commissioners or by the parish cannot be ascertained.

Less is known of the other officials of the commission. A reference to a Mr Lovell implies that he was the clerk,<sup>22</sup> and John Dudley and John Taylor are described as 'Survayores over the dikegraves'.<sup>23</sup> Taylor was the official of the Duchy of Lancaster who lived at Enfield, whilst Dudley was most probably the resident of Hackney who died in 1593. Both are listed as commissioners in attendance at one Court of Sewers even though they were not mentioned in the lists compiled in 1587 and 1589. This evidence suggests that their role was to provide an additional link between the commissioners and the dikegraves, to ensure that the latter carried out their duties properly.<sup>24</sup>

There are some aspects of the administration about which no proper evaluation can be made. One such is the role of juries. The instructions sent to the Tottenham dikegraves in 1576 were based on the findings of a jury during a survey, a jury was used to fix a local rate at a Court of Sewers at Limehouse, but no jury was summoned to consider Hicke's appeal against the commissioners' orders, a function they were particularly to fulfil on later commissions.<sup>25</sup> No other references remain, their exact role at this date cannot be determined.

Little is known also of the financing of this improvement scheme. The act of 1571 specified that the river could be improved 'at the costes and charges of the countrie alongest the saide River', and advantage was taken of this authorisation. However much of the work was financed by particular property owners, on the orders of the commissioners. The costly arrangements at Waltham were borne by the owners of Waltham Mill, Hicke paid for the lowshare at the mouth of his ditch, and many shoals, osier beds and trees were removed at the expense of adjoining property owners.<sup>26</sup>

In addition it is known that local rates were fixed, most probably at parish level all along the river. Of these local rates only that fixed for Stepney and Stratford remains. In 1576 the dikegraves there were ordered to collect £16 18s from owners of the local marshes and £2 from the inhabitants of Stratford at Bow. Only part of this sum was to be used to improve the Lea, the remainder was to be used for normal drainage and flood protection measures.<sup>27</sup>

27. *49 acres were rated at 3s 4d per acre. 1s 4d to be used for improving the Lea, the rest for a 'Common Sewer'. Another 31 acres were rated at 1s 4d towards improving the river,*

Besides this it is known that Fanshawe paid at least 100 marks towards the improvements,<sup>28</sup> but whether as rates or what is not known. There is some evidence to suggest that the costs were high. Road carriers in 1581 complained that the improvements had been and still were 'a greate and contynuall charge to the contrye', and in 1587 Lord Hunsdon argued that since the improvements had cost the counties of Essex and Hertfordshire a great deal of money it would be a shame if this investment was lost by the closure of the navigation.<sup>29</sup>

No actual costs of the work are available however. Nor is it known whether a county rate was fixed in addition to parish rates or whether voluntary contributions were solicited. What can be dismissed are statements that building the canal and improving the river cost the City of London £80,000.<sup>30</sup>

30. *This statement was first recorded by Sir Henry Chauncey in 1700, and has been repeated by later historians. Chauncey most probably heard it from parties, who in the 1690s were trying to establish the rights of the City of London along the lower Lea (see 12.1). It can be noted that the New River cost £18000 to build. Had the two schemes been confused?:*

### 5.3 The Commission of Sewers: its legal position

The Act of 1571 had authorised a commission, albeit with some confused drafting (see 2.2), to improve the river between Ware and the mouth of a canal built by the City of London, only after that canal had been built. No canal was ever built, and the membership of the Commission of Sewers issued in 1575 was not identical to either of the commissions specified in the act.

Yet it was stated by both Lord Burghley in 1580 and Lord Hunsdon in 1587 that the improvements had been carried out under the authority of the Act of 1571.<sup>31</sup> One opponent of the improvements did refer in 1581 to an unspecified 'erre in the lawe of passage by the river', but it was not until 1592 that one of the numerous petitions from the road carriers actually argued that the improvements were illegal because the canal had not been built. By this date the bargemen were more interested in protecting their rights to use the river rather than maintain the navigation that had been introduced during the 1570s, so they made no specific response to this point.<sup>32</sup>

The legal authority of this improvement commission is worth considering, for they introduced a novel policy using powers greater than those which were later to be allowed to Commissions of Sewers.

In the first years of the seventeenth century attempts were made by such bodies to improve the Medway, the Dee and the Wye, but these attempts were thwarted by local landowners who argued that the commissioners were exceeding their powers. Legal opinion concurred. In 1618 a book providing advice to justices of the peace emphasised the limited powers of Commissions of Sewers, stating that they could not make new cuts or try new inventions.<sup>33</sup>

Yet the Commissioners of Sewers along the Lea had built new cuts, and had tried new inventions such as the pound lock at Waltham. A strict reading of the Act of 1571 does not provide sufficient authorisation for such measures. The improvement scheme along the Lea was not only a technical innovation; it seems to have been a successful administrative innovation as well, even if it was never to be pursued elsewhere. It may not be coincidence that the Parliament of 1571 which authorised two river improvement acts involving an extension of the powers of Commissions of Sewers also passed an act altering the powers of such bodies in order to make them more effective.<sup>34</sup>

34. *13 Eliz., c.9. Life of any commission increased from 5 to 10 years, and decrees of commissioners to remain valid even after commission expired, until repealed by a later commission.*

A final point to note about the legal authority of this improvement commission was that it automatically expired after ten years in September 1585. Furthermore it was never renewed. Renewal was considered in 1587, 1588 and 1589, but no commission was issued, and it was not until 1607 that another Commission of Sewers was issued for the Lea.<sup>35</sup>

## NOTES TO CHAPTER FIVE

1. T.G. Barnes, A. Hassell--Smith, 'Justices of the Peace from 1558 to 1688- a Revised List of Sources', *Bulletin of the Institute of Historical Research*, xxxii(1959, 221-42; W.J. Jones, *The Elizabethan Court of Chancery*, (Oxford,1967),132-33.
2. Bodl. MS. Rawl. Essex 11 fos.98-99; BL, Lansdowne MS. 6b no.35.
3. Bodl., MS. Rawl. Essex 11 fos.98-99; BL, Lansdowne MS. 53 no.82; *ibid*, 60 no.35; Harte, fos.174-77; PRO, S.P. 12/109 no.19; *ibid*, 12/111 no.43.
4. BL,,Lansdowne MS. 32 no.41; T. Hearne, editor, *Itinerary of John Leland*, v. page xxvi.
5. J. Thirsk, *Economic Policy and Projects: The Development of a Consumer Society in Early Modern England* (Cambridge 1967), 11-12,24-25.
6. BL, Additional MS. 27979; VCH Herts. iii.387-88; T. Hearne,editor, *Itinerary of John Leland v. pages xv-xvi*.
7. BL. Lansdowne MS. 22 no.48; *ibid*, 25 nos.11,12; *ibid*, 32 nos.33,35,37,38; *ibid*, 77 no.16.
8. *Ibid*, 32 no.33.
9. W. Camden, *Britannia* (2 vols,London,1772 ed), i.321; Harte, fos.165-67; Bodl., MS. Rawl. Essex 11 fos.98-99; BL, Lansdowne MS. 22 no.48; *ibid*, 25 nos.11,12; Hatfield House, CP 166/47; *ibid*, Maps 11.53; PRO, S.P. 12/15 no.11.
10. J. Thirsk, *Economic Policy and Projects*.
11. BL, Lansdowne 32 no.40.
12. A.B. Beaven, *The Aldermen of the City of London* (2 vols, London,1908-13),*passim*. Osborne and Marshe had property in Tottenham, and Marshe may have been steward of the manor: W.B.B. Marcham, *Court Rolls of the Manor of Tottenham 1 Eliz-24 Eliz*(London,1963),
13. R.C. Somerville, *Duchy of Lancaster*, i.443,609; VCH Midd. v.233; R.C. Barnett, *Place, Profit and Power, A Study of the Servants of William Cecil, Elizabethan*

- Statesman, The James Sprunt Studies in History and Political Science, Vol. 51(Chapel Hill, North Carolina, 1969),110-112.
14. PRO, S.P. 12/104 fos.91,92,119; S.P. 12/121 fos.13-16; Hist. MSS. Com., 2, Salisbury, p.164; *ibid*, 13, Salisbury p.155; P.W. Hasler,editor, History of Parliament: The Commons 1558-1603(3 vols,London, 1981,passim; .S. Cockburn,editor, Calendar of Assize Records Essex Indictments, Elizabeth I London passim; J. S. Cockburn,editor, Calendar of Assize Records: Hertfordshire Indictments, Elizabeth I London, 1975,passim.
  15. Harte, fos.174-77; Bodl., MS. Rawl. Essex 11 fo.101; CLRO, Repertories, 19 fo.102; Hist MSS. Com.. 13, Salisbury, p.165.
  16. BL, Lansdowne MS. 22 no.48, *ibid*, 25 nos.11,12.
  17. PRO, S.P. 12/109 no-19; S.P. 12/111 no-43.
  18. Bodl., MS. Rawl. Essex 11 fo.99.
  19. A.M. Kirkus,editor, The Records of the Commissioners of Sewers in the Parts of Holland,15 7-1603, Lincoln Record Society Publications no.54 (Lincoln,1959), pp. xxxii-xxxv; S. Webb, B. Webb, Statutory Bodies for Special Purposes,54-56.
  20. Bodl., MS. Rawl. Essex 11 fos.98-99; PRO, S.P. 12/ 109 no.19.
  21. Bodl., MS. Rawl. Essex 11 fos.98-99,101. Thomas Penyngton was either the citizen and currier who died in 1593-94, or his son, both of whom lived at Tottenham. Thomas Pyckeringe of Stepney died in the 1580s. All his relatives were from Yorkshire, Northumberland or Cumberland: PRO, PROB 11/84(65); PROB 11/67(35); W.B.B. Marcham,editor, Tottenham Court Rolls,131,137.
  22. BL, Lansdowne MS. 22 no.48.
  23. Bodl., MS. Rawl. Essex 11 fo.101.
  24. *Ibid*, fo.99; PRO, PROB 11/83(17); R.C. Somerville, Duchy of Lancaster, i.609.
  25. Bodl., MS. Rawl. Essex 11 fos.98-99; PRO, S.P. 12/ 111 no.43.
  26. K.R. Fairclough, Waltham Pound Lock; PRO, S.P. 12/ 109 no.19; S.P. 12/111 no. 43; Bo dl., MS. Rawl. Essex 11 fos.98-99.
  27. Bodl., MS. Rawl. Essex 11 fo.101. 49 acres were rated at 3s 4d per acre. 1s 4d to be used for improving the Lea, the rest for a 'Common Sewer'. Another 31 acres were rated at 1s 4d towards improving the river,
  28. BL, Lansdowne MS. 32 no.33.



29. Ibid, no.41; PRO, S.P. 15/30 no.38.
30. This statement was first recorded by Sir Henry Chauncey in 1700, and has been repeated by later historians. Chauncey most probably heard it from parties, who in the 1690s were trying to establish the rights of the City of London along the lower Lea (see 12.1). It can be noted that the New River cost £18000 to build. Had the two schemes been confused?: Sir Henry Chauncey , Historical Antiquities of Hertfordshire,9-10; E.M. Hunt,The History of Ware, 18; T.S. Willan, The Inland Trade, ; B. Rudden, The New River (Oxford,1985), 17
31. BL, Lansdowne MS. 32 no.40; PRO, S.P. 15/30 no.38.
32. BL, Lansdowne MS. 32 no.41; Bodl., MS. Rawl. Essex 11 fos.94-95.
33. M. Dalton, The Country Iustice(London,1618),106-07; Sir Edward Coce, The Reports of Sir Edward Coke(7 vols, 13 parts,London,1738 ed), pt. 10,137-43; R. Callis, The Reading of That Famous and Learned Gentleman, Robert Callis...upon the Statute ... of Sewers...delivered ...at Grays Inn in August 16221 London,1648), 204-17; T.S. Willan, River Navigation in England 1600-1750,16-23.
34. 13 Eliz., c.9. Life of any commission increased from 5 to 10 years, and decrees of commissioners to remain valid even after commission expired, until repealed by a later commission.
35. BL, Lansdowne MS. 53 no.82; ibid, 60 no.35.